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HIGHLIGHTS OF THIS ISSUE

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Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1972 Crop of Upland Cotton; Base Acreage Allotments and National Production Goal

Sections 722.463 to 722.465 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) (referred to as the "act"), with respect to the 1972 crop of upland cotton (referred to as "cotton"). The purpose of these provisions is to (1) proclaim a national production goal; (2) establish a national base acreage allotment; and (3) apportion the national base acreage allotment to States. Section 722.466 is issued pursuant to the Agricultural Act of 1949, as amended (7 U.S.C. 1421 et seq.). This section establishes the cropland set-aside percentage. The latest available statistics of the Federal Government have been used in making determinations under these provisions.

Notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on September 14, 1971 (36 F.R. 18412), in accordance with 5 U.S.C. 553. The views and recommendations received in response to such notice have been duly considered.

In order that State and county ASC committees may complete the necessary work for issuing farm allotment notices in a timely manner for cotton producers to complete their plans for the 1972 crop of cotton, it is essential that these provisions be made effective as soon as possible. Accordingly, §§ 722.463 to 722.466 shall be effective upon filing this document with the Director, Office of the Federal Register. The material previously appearing in these sections under centerhead "1971 Crop of Upland Cotton; Base Acreage Allotments" remains in full force and effect as to the crop to which it was applicable.

§ 722.463 National production goal for the 1972 crop of cotton.

The national production goal for the 1972 crop of cotton is hereby proclaimed to be in the amount of 12,949,000 standard bales of cotton determined in accordance with the formula prescribed under section 342a of the act, based on the following data:

	Running bales
(1) Estimated domestic consumption, 1972–73 marketing year	8,000,000
(2) Estimated exports, 1972–73 marketing year	3,300,000
(3) Allowance for market expansion (5 percent of sum of (1) and (2))	565,000
(4) Adjustments to assure adequate stocks	1,034,000
Total	12,949,000
(5) 50 percent of the average offtake for the preceding 3 marketing years (1969, 1970, and estimated 1971)	5,549,000

§ 722.464 National base acreage allotment for the 1972 crop of cotton.

The national base acreage allotment for the 1972 crop of cotton shall be 11,500,000 acres, determined in accordance with section 350(a) of the act.

§ 722.465 Apportionment of national base acreage allotment to the States.

The national base acreage allotment of 11,500,000 acres is apportioned to the States in accordance with section 350(b) of the act as follows:

States:	*State allotment (acres)*
Alabama	677,414
Arizona	238,783
Arkansas	955,003
California	531,204
Florida	22,154
Georgia	582,506
Illinois	2,008
Kansas	8
Kentucky	4,922
Louisiana	400,355
Mississippi	1,099,928
Missouri	256,925
Nevada	2,530
New Mexico	123,711
North Carolina	312,235
Oklahoma	534,493
South Carolina	477,239
Tennessee	381,846
Texas	4,885,508
Virginia	11,051

§ 722.466 Cropland set-aside percentage.

The cropland set-aside percentage for the 1972 crop of cotton shall be 20 percent determined in accordance with section 103(e)(4)(A) of the Agricultural Act of 1949, as amended.

(Secs. 301, 342a, 350, 103, 52 Stat. 38, as amended, 84 Stat. 1358; 63 Stat. 1051; 7 U.S.C. 1301, 1342a, 1350, 1421)

Effective date: Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on November 10, 1971.

J. PHIL CAMPBELL,
Acting Secretary.

[FR Doc.71-16631 Filed 11-11-71;9:48 am]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 507]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.807 Lemon Regulation 507.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy

of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 9, 1971.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period November 14 through November 20, 1971, is hereby fixed at 175,000 cartons.

(2) As used in this section, "handled" and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 11, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16728 Filed 11-12-71;11:48 am]

[Grapefruit Reg. 81]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Limitation of Handling

§ 912.381 Grapefruit Regulation 81.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 11, 1971.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period November 15, 1971 through November 21; 1971, is hereby fixed at 145,000 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 12, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16731 Filed 11-12-71;11:48 am]

[Grapefruit Reg. 51]

PART 913—GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

Limitation of Handling

§ 913.351 Grapefruit Regulation 51.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 913, as amended (7 CFR Part 913), regulating the handling of grapefruit grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Interior Grapefruit Marketing Committee, established under said marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Interior grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such Interior grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 11, 1971.

(b) *Order.* (1) The quantity of grapefruit grown in the Interior District which may be handled during the period November 15, 1971, through November 21, 1971, is hereby fixed at 225,000 standard packed boxes.

(2) As used in this section, "handled," "Interior District," "grapefruit," and "standard packed box" have the same meaning as when used in said marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 12, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-16729 Filed 11-12-71;11:48 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 71-SW-63; Amdt. 39-1330]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Models 206A and 206A-1 Helicopters

Amendment 39-1190 (36 F.R. 6826, AD 71-8-3), imposes a limitation against flight into falling or blowing snow on all

Bell Model 206A–1 helicopters and on Bell Model 206A helicopters equipped with Particle Separator Kit, Self Purging, P/N 206–706–201–1 or P/N 206–706–200–1, certificated in all categories. After issuing Amendment 39–1190, further redesign, testing, and evaluation revealed that helicopters of these types could be expected to operate safely during flight into snow providing certain operating limitations are observed in conjunction with installation of a modified engine induction system particle separator. Therefore, AD 71–8–3 is being amended to recognize this capability.

Since this amendment to AD 71–8–3 provides a means of relief of a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39–1190 (36 F.R. 6826), AD 71–8–3, is amended to provide alternate limitations and configurations eligible for these helicopters, and to limit the applicability of this directive to those helicopters requiring modification to be eligible for the alternate limits.

BELL: Applies to Model 206A–1 helicopters, serial numbers 39998 through 40994 and to all Model 206A helicopters equipped with Particle Separator Kit, Self Purging, P/N 206–706–201–1, or P/N 206–706–200–1, certificated in all categories.

Compliance required before further flight in snow, but no later than 25 hours time in service after the effective date of this airworthiness directive, unless already accomplished.

1. To prevent power interruption caused by ingestion into the engine of snow or ice which may have accumulated in the engine inlet during flight, crew notification of a limitation against flight into snow must be accomplished as follows:

a. Install a permanent type placard in full view of the pilot as near as possible to the basic limitations placard, worded as follows:

"FLIGHT INTO FALLING OR BLOWING SNOW IS NOT PERMITTED"

b. If approved placards are unavailable, the owner or operator may make and use a placard containing the above words. Letters must be at least one-eighth inch in height.

2. Alternatively, upon accomplishment of modifications listed below, the placard required by paragraph 1. may be removed and flight operations may be conducted in falling or blowing snow for periods not in excess of 90 minutes, provided flight visibility due to snow is not less than one-half mile.

a. For the Model 206A–1, S/N 39998 through 40994, install Particle Separator Assembly, P/N 206–062–819–5 in accordance with Bell Helicopter Company Drawing 206–062–800–5. Incorporate revised pages A, 7, 13, 15, and 20, approved and dated October 26, 1971, into the Model 206A–1 Flight Manual, approved and dated May 5, 1969.

b. For Model 206A helicopters equipped with Particle Separator Kit, Self Purging, P/N 206–706–201–1 or P/N 206–706–200–1, modify and/or replace particle separator system components as indicated in applicable sections of Bell Service Instruction No. 206–89, revised October 25, 1971, or later FAA approved revision. Incorporate revised pages A, B, and D, approved and dated October 18, 1971, into the Model 206A Flight Manual, approved and dated October 20, 1966, or later FAA approved reissues. Incorporate revised pages 1, 2, and 5, approved and dated October 18, 1971, into the Model 206A Flight Manual Supplement titled "Snow Particle Separator—Engine Air Induction System", approved and dated July 23, 1970.

Alternate means of compliance or equivalent replacement parts may be acceptable if approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration, Fort Worth, Tex.

Amendment 39–1190 became effective April 12, 1971.

This amendment becomes effective November 18, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on November 4, 1971.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.71–16604 Filed 11–12–71;8:46 am]

Chapter V—National Aeronautics and Space Administration

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 1204.11—Environmental Quality and Control

1. New Subpart 1204.11 is added as follows:

Sec.
1204.1100 Scope.
1204.1101 Policy.
1204.1102 Implementation.
1204.1103 Guidelines for the preparation of environmental statements.

AUTHORITY: The provisions of this Subpart 1204.11 are issued pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); section 2(f) of Executive Order 11514 (35 F.R. 4247, March 5, 1970); the guidelines issued by the Council on Environmental Quality (36 F.R. 7724, April 23, 1971); and the Office of Management and Budget Bulletin No. 72–6 (September 14, 1971).

§ 1204.1100 Scope.

This Subpart 1204.11 sets forth the National Aeronautics and Space Administration (NASA) policy guidelines concerning administering agency activities for the protection and enhancement of environmental quality and the preparation of environmental statements.

§ 1204.1101 Policy.

It is NASA policy to:

(a) Use all practicable means, consistent with NASA's statutory authority, available resources, and national policy, to protect and enhance the quality of the environment.

(b) Provide for proper and adequate attention to environmental protection and enhancement in all NASA activities, including those performed under contract or grant.

(c) Use organized, systematic, timely, and effective approaches to meet NASA's responsibilities in environmental matters.

(d) Pursue appropriate research and development which may identify and develop the potential for application of technologies useful in the protection and enhancement of environmental quality.

(e) Cooperate as fully as possible with State, local, and regional authorities in the pursuit of environmental protection and enhancement objectives wherever NASA facilities are located.

(f) Instill an environmental awareness in all NASA employees and contractors.

§ 1204.1102 Implementation.

(a) The Associate Administrator, NASA, or his designee, shall:

(1) Coordinate the formulation and revision of NASA policies and positions on matters pertaining to environmental protection and enhancement; and

(2) In cooperation with the Assistant Administrator for DOD and Interagency Affairs, represent NASA in working with other governmental agencies and interagency organizations in the formulation, revision, and uniform understanding and application of Government-wide policies relating to the environment.

(b) Consistent with Government-wide and NASA policies and positions developed in accordance with paragraph (a) of this § 1204.1102, the Assistant Administrator for Administration or his designee shall:

(1) Develop and insure the implementation of Agencywide standards and procedures for protection and enhancement of environmental quality, including those necessary to insure NASA compliance with applicable laws and regulations;

(2) Determine the resources needed by NASA to comply with applicable laws and regulations and to implement the Agency's policies on protection and enhancement of environmental quality;

(3) Establish and maintain appropriate working relationships with the Council on Environmental Quality, Environmental Protection Agency, the Departments of Health, Education, and Welfare and of the Interior, and other national, State, and local governmental agencies; and

(4) Acquire information for and prepare NASA reports on environmental matters and NASA comments on other agency reports required by law and regulation.

(c) Officials in charge of headquarters offices are responsible for identifying, within their respective areas, all matters which may have an effect on protection and enhancement of environmental quality, and insuring that necessary actions are taken to meet the requirements of applicable laws and regulations. Program and institutional directors are additionally responsible for giving high priority in the pursuit of program objectives to the identification, analysis, and proposal of research and development which if conducted by NASA or other agencies may contribute to the achievement of beneficial environmental objectives.

(d) Each NASA Field Installation Director is responsible for:

(1) Implementing Agency-wide policies, standards, and procedures on protection and enhancement of environmental quality, and supplementing them as appropriate in local circumstances.

(2) Specifically assigning responsibilities for environmental activities under the installation's cognizance to appropriate subordinates, while providing for the coordination of all such activities.

(3) Establishing and maintaining appropriate working relationships with national, State, regional, and local governmental agencies responsible for environmental regulation in localities in which the field installation conducts its activities.

§ 1204.1103 Guidelines for the preparation of environmental statements.

(a) *Criteria.* (1) The basic criteria to be used in determining whether proposed legislation, projects, or activities have the potential to have a significant effect on the quality of the human environment are contained in the guidelines issued by the Council on Environmental Quality (hereafter referred to as "CEQ Guidelines") and published in the FEDERAL REGISTER (36 F.R. 7724, April 23, 1971) and the Office of Management and Budget Bulletin 72-6 (September 14, 1971).

(2) In accordance with paragraph 5(b) of the CEQ Guidelines, the statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed with a view to the overall, cumulative impact of the action proposed (and to further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment of a local area may be significantly affected, the statement is to be prepared. Proposed actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases.

(3) Section 101(b) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)) indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. Significant effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through effects on the environment.

(b) *NASA activities which may require environmental assessments and statements*—(1) *Activities now underway.* All agency activities must be evaluated for environmental impact on a continuing basis and assessments conducted and statements prepared as needed. Most of NASA's activities and facilities are now covered by statements. Therefore, changes in ongoing activities or discovery of a hitherto unrecognized environmental effect stemming from ongoing activities, which warrant a reassessment, may require a supplement to an existing statement.

(2) *New activities.* Awareness of the effects which any action may have on the quality of man's environment is a continuing responsibility of all NASA employees and contractors. Thus, the consideration of environmental impact must be a part of the formulation and definition of all new or revised agency activities. In view of the variety of activities in which NASA engages, these guidelines are necessarily flexible in their specification of the timing of environmental assessment related to proposed actions (see paragraph (d) of this § 1204.1103). The important point is that the assessment be completed and documented as soon as definition of the activity is complete enough to permit the reasonable understanding of probable effects. In the case of flight programs or projects, this frequently will be as a part of program/project definition. In the case of some systems and components, however, it may be as a part of design. In the case of real estate acquisitions or leases, it should be tied to considerations of the uses which would be made of the property, and should be closely related to facility planning and design. In the case of operations, the assessment could be needed prior to acquisition of the necessary technology or it could be made in planning, in the more routine operation of facilities and installations, for the use of already acquired technology. In each of these cases, it must be recognized that NASA must allow at least 60 days from the issuance of the draft before a statement may be issued in final form, and further, NASA must allow at least 30 days from the issuance of the final statement before taking action on the activity proposed therein. Thus, 90 days is the minimum leadtime for actions requiring the issuance of an environmental statement. A continuing awareness is essential if NASA is to meet its obligations in environmental protection and enhancement without unnecessarily deferring other program action.

(c) *Content of an environmental statement.* Paragraph 6 of the CEQ Guidelines presents a detailed discussion on the expected content of an environmental statement. The CEQ Guidelines in paragraph 6(a) detail seven particular items which should be considered in drafting the environmental statement. These seven items are to be regarded as the format of the statement; if an item is not applicable, a statement to that effect should be made. In brief, the seven items as prescribed in the CEQ Guidelines paragraph 6(a) are:

(1) A description of the proposed action.

(2) The probable total impact of the proposed action on the environment.

(3) Any probable adverse environmental effects which cannot be avoided should the proposal be implemented.

(4) Alternatives to the proposed action, including a rigorous exploration and objective evaluation of the alternatives and their costs and effects on the environment.

(5) The relationship between the local short-term uses of the environment and the maintenance and enhancement of long-term productivity.

(6) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(7) Where appropriate, a discussion of problems and objections raised by other Federal, State, and local agencies and by private organizations and individuals in the review process and the disposition of the issues involved.

In addition, pursuant to paragraph 6(c) of the CEQ Guidelines, the attachment of a summary sheet as prescribed, is required.

(d) *Processing environmental statements*—(1) *Assessment.* The Official in charge of each headquarters office shall provide for an assessment, as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and paragraph 2 of the CEQ Guidelines and as discussed in paragraph (b) of this § 1204.1103, of the environmental impact of each major action (as that term is contemplated by the National Environmental Policy Act and the CEQ Guidelines) which he proposes or which is to be taken under his programmatic or institutional cognizance.

(2) *Documentation required.* If the assessment indicates the need for a new or revised environmental statement, it shall be prepared in accordance with paragraph (c) of this § 1204.1103. But when there is a substantive change in an ongoing program or in the recognition of the environmental effects of an ongoing program (as discussed in paragraph (b)(1) of this § 1204.1103) or a new activity is to be undertaken (as discussed in paragraph (b)(2) of this § 1204.1103) and the assessment indicates that no environmental statement is necessary, then the official responsible for the assessment shall notify the Assistant Administrator for Administration, in writing, that the assessment has been conducted and that either (i) no environmental statement is considered necessary, or (ii) an existing statement adequately covers the proposed action. If no environmental statement is considered necessary, but if the proposed action or legislation involves the authorities of the Administrator of the Environmental Protection Agency with respect to water and air quality, solid waste, pesticides, radiation, noise, etc., and if it may be considered to come within the scope of section 309 or title IV of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), then the proposal for the action, or the proposed legislation, is to be submitted to the Assistant Administrator for Administration for transmittal when appropriate to the Environmental Protection Agency for comment under paragraph 8 of the CEQ Guidelines.

(3) *Preparation and submission of statement.* If the assessment indicates that (i) a significant environmental effect may result from the proposed action or proposed legislation, or (ii) a proposed action is likely to be highly controversial with respect to environmental effects, the official providing for the assessment shall have prepared a seven-point environmental statement as described in paragraph (c) of this

§ 1204.1103, and solicit comments thereon from other appropriate elements of NASA. Fifty copies of this statement and all of its attachments shall be submitted to the Assistant Administrator for Administration, in draft, together with—

(a) Five copies of any comments thereon, and

(b) A plan for coordination with appropriate State and local agencies, organization, and individuals.

This submission shall be accomplished prior to any formal review outside NASA.

(4) *Review of draft statement and plan for coordination with State and local agencies, organizations, and individuals by Assistant Administrator for Administration.* The Assistant Administrator for Administration shall review (i) the plan for coordination with State and local agencies, organization, and individuals, and (ii) the draft statement and its attachments and obtain additional comments from other elements of NASA, as appropriate, and communicate with the originating official, indicating concurrence or recommending changes in these documents.

(5) *Submission of draft statement to the Council on Environmental Quality.* Subsequent to review and revision, if necessary, of the draft, the Assistant Administrator for Administration shall submit 10 copies of the draft statement with appropriate attachments to the Council on Environmental Quality. The originating NASA official shall also be sent a copy of the draft statement as submitted to the Council on Environmental Quality.

(6) *Review of draft statement by other national governmental agencies.* Upon submission of the draft statement to the Council on Environmental Quality, and in accordance with paragraph 8 of the CEQ Guidelines, the Assistant Administator for Administration shall provide for solicitation of the views of other national governmental agencies having jurisdiction by law or special expertise with any of the environmental problems associated with the proposed action. Any such views shall be provided to the originating official for consideration in preparing the final statement.

(7) *Review of draft statement by State and local agencies, organizations, and individuals.* Upon approval by the Assistant Administrator for Administration of the plan for State and local coordination, the originating NASA official shall provide for solicitation of comments on the draft statement from affected State and local agencies concurrent with the solicitation of national agencies by the Assistant Administrator for Administration. Comments on the draft environmental statement may be obtained directly, through State and local clearinghouses (see Office of Management and Budget Circular No. A-95), and by notice in the FEDERAL REGISTER. This notice should specify that replies are required no later than 60 days from publication date.

(8) *Preparation and submission of final statement to Council on Environmental Quality.* After conclusion of the review process with other national, State, and local agencies, the originating NASA official shall consider all suggestions and revise the statement as may be appropriate. He shall at this time complete the seventh item of the statement which is a discussion of the problems and objections raised by other Federal, State, and local agencies and by private organizations and individuals and a report on NASA's disposition of the issues involved. Fifty copies of the final environmental statement and summary sheet and 15 copies of all comments received shall be forwarded to the Assistant Administrator for Administration who will thereupon obtain any additional approvals which circumstances may warrant and officially submit the final statement to Council on Environmental Quality. The final statement shall accompany the proposal through the normal NASA review process and shall be considered by NASA officials in the course of their review.

(9) *Public availability of environmental statements.* Each draft and final environmental statement prepared and submitted under this subpart and the related documents prescribed by law and regulation will be available for public review and copying in the NASA Information Center, 600 Independence Avenue SW., Washington, DC 20546, and at information centers at appropriate field installations and where appropriate (see Office of Management and Budget Circular No. A-95) at State and local clearinghouses, on and after the date of its submission to the Council on Environmental Quality, or, in the case of any statement relating to legislative proposals, on and after the date of its submission to the Congress.

(10) *Questions and information.* Questions relating to the need for, or scope of, environmental assessments and statements should be referred to the Assistant Administrator for Administration. Copies of all laws and regulations referenced in this subpart have been provided to all NASA field installations and headquarters offices by the Office of the General Counsel.

(e) *Processing environmental statements originated by other governmental agencies.* Requests for review and comments on any environmental statement prepared by another governmental agency will be directed to the Assistant Administrator for Administration for appropriate action within NASA. The Assistant Administrator for Administration shall determine which NASA elements should review the statement based on the nature of the environmental impact, shall solicit their comments and consolidate them, obtain any additional approvals which may be warranted, and return the review report with NASA's comments to the originating agency.

(f) *Processing of legislative actions.* NASA is responsible for identifying those of its legislative proposals, or reports on bills for which it is the principal agency concerned, that would require the preparation of the environmental statements and receipts of comments from other national, State, and local agencies. This process, discussed in the Office of Management and Budget Bulletin No. 72-6, and paragraph 5(a)(i) of the CEQ Guidelines will be handled by NASA headquarters, under the direction of the Assistant Administrator for Administration, through coordination with the Office of Legislative Affairs, Office of Policy and University Affairs, and the Office of General Counsel.

(g) *Implementing actions.* NASA officials will provide the Assistant Administrator for Administration with three copies of any instructions which they issue to implement or supplement this subpart.

Effective date. The provisions of § 1204.1100–1204.1102 were effective October 13, 1970; the provisions of § 1204.1103 except paragraphs (a)(1), (c) (6), (7), and (8), and (f) were effective June 30, 1971; and the provisions of paragraphs (a)(1), (c) (6), (7), and (8), and (f) of § 1204.1103 are effective October 31, 1971.

GEORGE M. LOW,
Deputy Administrator.

[FR Doc.71-16503 Filed 11-12-71;8:46 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Service,[1] Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, MULES, AND ZEBRAS

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, and the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126), Part 75, Title 9, Code of Federal Regulations, restricting the interstate movement of horses, asses, mules, and zebras, is hereby amended in the following respects:

In § 75.4, paragraph (a) is amended to read:

§ 75.4 Notice relating to existence of Venezuelan equine encephalomyelitis and/or the vector of said disease, quarantine and conditions of interstate movement.

(a) Notice is hereby given that Venezuelan equine encephalomyelitis, a communicable disease of horses, asses, mules, and zebras, and/or the vector of said disease, exists in the States of Louisiana and Texas and that said States are quarantined because of the existence of said disease and/or the vector thereof.

* * * * *

[1] The functions prescribed in Part 75 of Chapter I, 9 CFR, have been transferred from the Agricultural Research Service, U.S. Department of Agriculture, to the Animal and Plant Health Service of the Department (36 F.R. 20707).

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126; 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

Venezuelan equine encephalomyelitis is a viral disease of horses and other equidae. The disease is transmitted primarily through several species of mosquitoes and may be transmitted to humans. The mosquito population acquires the infection from horses which are in the incubative stage of the disease and disseminates the infection to new localities.

The disease entered the United States from Mexico and was disseminated extensively in Texas.

The State of Texas was quarantined because of Venezuelan equine encephalomyelitis, effective July 13, 1971 (36 F.R. 13202); the States of Arkansas, Louisiana, New Mexico, and Oklahoma were quarantined because of the existence of vectors of the disease, effective July 19, 1971 (36 F.R. 13677); and the State of Mississippi was quarantined because of the existence of vectors of the disease, effective August 2, 1971 (36 F.R. 14631). The States of Arkansas, New Mexico, and Oklahoma were released from quarantine effective September 10, 1971 (36 F.R. 18507).

In view of the fact that more than 96 percent of the susceptible equine population has now been vaccinated against Venezuelan equine encephalomyelitis in the State of Mississippi, thus providing a vaccination buffer zone north of the area in Texas where the disease is known to exist, and in view of the fact that extensive, prolonged, and exhaustive investigation in that State has failed to disclose any evidence indicative of Venezuelan equine encephalomyelitis, the State of Mississippi is hereby released from quarantine.

The amendment relieves certain restrictions presently imposed but no longer deemed necessary to prevent the spread of Venezuelan equine encephalomyelitis, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to this Department. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of November 1971.

F. J. MULHERN,
Acting Administrator,
Animal and Plant Health Service.

[FR Doc.71-16602 Filed 11-12-71;8:45 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 75—MANDATORY SAFETY STANDARDS, UNDERGROUND COAL MINES

Fire Suppression Devices and Fire-Resistant Hydraulic Fluids on Underground Equipment; Correction

In F.R. Doc. 71-14735, appearing on pages 19583–19586 of the issue for Friday, October 8, 1971, the following changes should be made:

1. In § 75.1107-4(a) on page 19584 change March 30, 1971 to March 30, 1972.

2. In § 75.1107-5(a) (2) on page 19584 change March 30, 1971 to March 30, 1972 in both sentences.

3. In § 75.1107-5(c) on page 19584 the word "protective" should read "protected."

4. In § 75.1107-5(e) on page 19584 delete the comma and the words "test arrangement."

5. In § 75.1107-8(d) on page 19585 delete the comma after the word "saturated" in parenthesis, delete the word "minimum" in that part of the first sentence after the semicolon, and in the fourth sentence delete the words "Hose couplings shall be of a type that" and capitalize the following word "The."

6. In § 75.1107-8(h) on page 19585 add the words "except as provided in (d), above." to the last sentence.

7. In § 75.1107-9(c) on page 19585 change March 30, 1971 to March 30, 1972.

8. In § 75.1107-13 on page 19585 insert the word "unattended" between the first two words "All underground."

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

NOVEMBER 8, 1971.

[FR Doc.71-16591 Filed 11-12-71;8:45 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGFR 71-138]

PART 110—ANCHORAGE REGULATIONS

Mississippi River Below Baton Rouge, La.

This amendment to the anchorage regulations revises the description of the Baton Rouge General Anchorage. This change in description is based on a 1962 Army Corps of Engineers survey that determined a change in the position of the Head of Passes.

Since this amendment reflects the change in description and imposes no additional burden on any person, notice and public procedure thereon is unnecessary and the amendment may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

Accordingly, § 110.195(a) is amended by revising subparagraph (7) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, La., including South and Southwest Passes.

(a) * * *

(7) *Baton Rouge general anchorage.* An area, 1,400 feet wide, between Mile 225.8 and Mile 227.3 above Head of Passes with its west limit along the low water line.

* * * * *

(Sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(A), 80 Stat. 937; 33 U.S.C. 471, 49 U.S.C. 1655(g)(1)(A); 49 CFR 1.46(c)(1), 33 CFR 1.05-1(c)(1) (36 F.R. 19160))

Effective date. This amendment shall become effective on November 15, 1971.

Dated: November 10, 1971.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.71-16613 Filed 11-12-71;8:46 am]

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart H—Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations, and Orders Issued Thereunder

On August 31, 1971, there was published in the FEDERAL REGISTER (36 F.R. 17439–17443), pursuant to delegated authority, and in accordance with Executive Order No. 11246, as amended by Executive Order No. 11375, and rules and regulations implementing said order, as amended, a notice and text of proposed rules of practice and procedure to be used in proceedings for the imposition of sanctions under section 209(a) (1), (5), and (6) of Executive Order No. 11246, as amended, for violations of the Executive order, as amended, and rules, regulations, and orders thereunder.

Interested persons were given 30 days within which to participate in the rule making through submission of written comments, suggestions or objections. Written comments were received and

after due consideration of the views presented, the proposed rules are hereby adopted, subject to the following change:

In the last sentence of § 4.771(a), the words "or their representatives" are inserted between the word "parties" and the word "shall" so that the sentence reads: "Depositions of persons other than parties or their representatives shall be upon consent of the deponent."

Effective date. These regulations shall be effective upon this publication in the FEDERAL REGISTER (11–13–71).

Dated: November 8, 1971.

WARREN F. BRECHT,
Deputy Assistant Secretary of the Interior.

Subpart H—Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations and Orders Issued Thereunder

AUTHORITY: The provisions of this Subpart H issued under Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), as amended by Executive Order No. 11375 of October 13, 1967 (32 F.R. 14303), and 41 CFR 60–1.26(b), 33 F.R. 7804 (May 28, 1968).

CROSS REFERENCE: See Subpart A for the organization, authority and jurisdiction of the Office of Hearings and Appeals, including its Hearings Division. To the extent they are not inconsistent with these special rules, the general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals, contained in Subpart B of this part, are applicable also to proceedings under these regulations.

Subpart H—Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations and Orders Issued Thereunder

GENERAL

§ 4.750 Authority.

These rules of procedure supplement, and are established pursuant to, the provisions of 41 CFR 60–1.26(b).

§ 4.751 Scope of rules.

These rules govern the practice and procedure for proceedings conducted, and decisions made, by the Department precedent to the imposition of sanctions under section 209(a) (1), (5), and (6) of Executive Order 11246, as amended by Executive Order 11375, for violations of the Executive Order 11246, as amended, and rules, regulations and orders thereunder.

§ 4.752 Definitions.

Except as otherwise indicated in the context in which it appears in these regulations, the term

(a) "Department" means the Department of the Interior.

(b) "Secretary" means the Secretary of the Interior.

(c) "Director" means the Director, Office for Equal Opportunity, Department of the Interior.

(d) "Office for Equal Opportunity" means the Office for Equal Opportunity in the Department of the Interior.

(e) "Office of Federal Contract Compliance" means the Office of Federal Contract Compliance, U.S. Department of Labor.

(f) "Office of Hearings and Appeals" means the Office of Hearings and Appeals in the Office of the Secretary, Department of the Interior.

(g) "Hearing examiner" means a hearing examiner appointed by the Director, Office of Hearings and Appeals.

(h) "Executive Order" means Executive Order 11246, 30 F.R. 12319, as amended by Executive Order 11375, 32 F.R. 14303.

(i) "Notice" means a notice of hearing in a proceeding instituted under 41 CFR 60–1.26(b) and these regulations.

(j) "Party" means a respondent; the Director; and any person or organization participating in a proceeding pursuant to § 4.757.

(k) "Respondent" means a person or organization against whom sanctions are proposed because of alleged violations of Executive Order 11246, as amended, and rules, regulations, and orders thereunder.

§ 4.753 Time computation.

Except as otherwise provided by law, in computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act or event, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, or other nonbusiness day, in which event it includes the next following day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

DESIGNATION AND RESPONSIBILITIES OF HEARING EXAMINER

§ 4.754 Designation.

Hearings shall be held before a hearing examiner designated by the Chief Hearing Examiner, Hearings Division, Office of Hearings and Appeals.

§ 4.755 Authority and responsibilities.

(a) The hearing examiner shall have all powers necessary to preside over the parties and the proceedings, conduct the hearing, and enter recommended findings and conclusions and a recommended determination. His powers shall include, but not be limited to, the power to:

(1) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(2) Require parties to state their position with respect to the various issues in the proceedings.

(3) Establish rules for media coverage of the proceedings.

(4) Rule on motions and other procedural items in matters before him.

(5) Regulate the course of the hearing, the conduct of counsel, parties, witnesses and other participants.

(6) Administer oaths, call witnesses on his own motion, examine witnesses and direct witnesses to testify.

(7) Receive, rule on, exclude, or limit evidence.

(8) Fix time limits for submission of written documents in matters before him.

(9) Take any action authorized by these regulations or in conformance with the provisions of applicable law.

(b) The hearing examiner shall recommend a determination of the issues on the basis of the record before him. Together with his recommended determination, he shall recommend findings of fact

and conclusions of law to the Director, Office of Hearings and Appeals.

APPEARANCE AND PRACTICE

§ 4.756 Participation by a party.

Subject to the provisions contained in Part 1 of this subtitle, a party may appear in person, by representative, or by counsel, and participate fully in any proceeding held pursuant to these regulations.

§ 4.757 Determination of parties.

(a) The Respondent and the Director are the initial parties to the proceeding. To the extent that proceedings hereunder are based in whole or in part on matters subject to a collective bargaining agreement, any labor organization which is signatory to such agreement shall also have the right to participate as a party.

(b) Other persons or organizations shall have the right to participate as parties if the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings.

(c) Any person or organization wishing to participate as a party under this section shall submit a petition to the hearing examiner within 15 days after the notice has been served. The petition should be filed with the hearing examiner and served on Respondent, on the Director, and on any other person or organization who has been made a party at the time of filing. Such petition shall concisely state: (1) Petitioner's interest in the proceeding, (2) how his participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on which petitioner wishes to participate, and (5) whether petitioner intends to present witnesses.

(d) The hearing examiner shall promptly ascertain whether there are objections to the petition. He shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraphs (a) and (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the hearing examiner may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners; provided that the representative of a labor organization qualifying to participate under paragraph (a) of this section shall be permitted to participate as a party. The hearing examiner shall give each such petitioner written notice of the decision on his petition. If the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The hearing examiner shall give written notice to each party of each petition granted.

(e) Persons or organizations whose petition for party participation is denied may appeal the decision to the Director, Office of Hearings and Appeals, within 7 days of receipt of denial. The Director, Office of Hearings and Appeals, will make the final decision for the Department to grant or deny the petition.

§ 4.758 Determination and participation of amici.

(a) Any interested person or organization wishing to participate as amicus curiae in the proceeding shall file a petition before the commencement of the hearing. Such petition shall concisely state the petitioner's interest in the hearing and who will represent petitioner.

(b) The hearing examiner will grant the petition if he finds that the petitioner has an interest in the proceedings and may contribute materially to the disposition of the proceedings. The hearing examiner shall give the petitioner written notice of the decision on his petition.

(c) An amicus curiae is not a party but may only participate as provided in paragraph (d) of this section.

(d) An amicus curiae may submit a written statement of position to the hearing examiner at any time prior to the beginning of a hearing, and shall serve a copy on each party. He may also file a brief or written statement at such time as the parties submit proposed findings and conclusions and supporting briefs to the hearing examiner and at such time as the parties file exceptions to the recommended determination of the hearing examiner.

FORM AND FILING OF DOCUMENTS

§ 4.759 Form.

Documents filed pursuant to a proceeding herein shall show the docket description and title of the proceeding, the party or amicus submitting the document, the date signed, and the title, if any, and address of the signatory. The original will be signed in ink by the party representing the party or amicus. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 4.760 Filing and service.

(a) All documents submitted in a proceeding shall be served on all parties. The original and two copies of each document shall be submitted for filing. Filings shall be made with the hearing examiner, at the address stated in the notice. With respect to exhibits and transcripts of testimony, only originals need be filed.

(b) Service upon a party or amicus shall be made by delivering one copy of each document requiring service in person or by certified mail, return receipt requested, properly addressed with postage prepaid, to the party or amicus or his attorney, or designated representative. Filing will be made in person or by certified mail, return receipt requested, to the hearing examiner, at the address stated in the notice of scheduled hearing.

(c) The date of filing or of service shall be the day when the matter is deposited in the United States mail or is delivered in person.

§ 4.761 Certificate of service.

The original of every document filed and required to be served upon parties shall be endorsed with a certificate of service signed by the party or amicus curiae making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service.

PROCEDURES

§ 4.762 Notice of hearing.

In response to Respondent's request for a hearing, the Director shall serve on the Respondent, pursuant to 41 CFR 60–1.26(b), a notice of hearing by registered mail, return receipt requested, to Respondent's last known address. Such notice shall contain the time and place of the hearing; the legal authority under which the proceedings are to be held; and the matters pursuant to which sanctions or other actions are proposed.

§ 4.763 Answer to notice.

Within 15 days after receipt of the notice of hearing, Respondent may file an answer. This answer shall admit or deny specifically and in detail matters set forth in each allegation of the notice unless Respondent is without knowledge, in which case his answer should so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged in the answer as affirmative defenses shall be separately stated and numbered. Failure of Respondent to file an answer within the 15-day period following receipt of the notice may be deemed an admission of all facts recited in the notice.

§ 4.764 Amendments.

The Director may amend his notice once as a matter of course before an answer is filed, and Respondent may amend its answer once as a matter of course not later than 15 days after it is filed. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 10 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

§ 4.765 Motions.

Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the hearing examiner may require that they be reduced to writing and filed and served on all parties. Within 8 days after a written motion or petition is served, any party may file a response to a motion or petition. An immediate oral response may be made to an oral motion. Oral argument on motions will be at the discretion of the hearing examiner.

§ 4.766 Disposition of motions.

The hearing examiner may not grant a written motion or petition prior to

expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately.

§ 4.767 Interlocutory appeals.

No interlocutory appeals will be permitted from an adverse ruling except as specifically provided in these rules.

§ 4.768 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing, if the hearing examiner so directs. Proposed exhibits not so exchanged in accordance with the hearing examiner's order may be denied admission as evidence. The authenticity of all exhibits submitted prior to the hearing, under direction of the hearing examiner, will be deemed admitted unless written objection thereto is filed and served on all parties, or unless good cause is shown for failure to file such written objection.

§ 4.769 Admissions as to facts and documents.

Not later than 25 days prior to the date of the hearing any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period of 20 days; the party to whom the request is directed serves upon the requesting party a statement either (a) denying specifically the matters as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

§ 4.770 Discovery.

(a) *Methods.* Parties may obtain discovery as provided in these rules by depositions, written interrogatories, production of documents, or other items; or by permission to enter property, for inspection and other purposes.

(b) *Scope.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing examiner may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) *Sequence and timing.* Methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(e) *Time limit.* Discovery by all parties will be completed within such time as the examiner directs, from the date the notice of hearing is served on Respondent.

§ 4.771 Depositions.

(a) A party may take the testimony of any person, including a party, by deposition upon oral examination. This may be done by stipulation or by notice, as set forth in paragraph (b) of this section. On motion of any party or other person upon whom the notice is served, the hearing examiner may for cause shown enlarge or shorten the time for the deposition, change the place of the deposition, limit the scope of the deposition or quash the notice. Depositions of persons other than parties or their representatives shall be upon consent of the deponent.

(b (1) The party will give reasonable notice in writing to every other party of the time and place for taking depositions, the name and address of each person to be examined, if known, or a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The notice to a deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

(3) A party may name as the deponent a corporation, partnership, association, or governmental agency and may designate a particular person within the organization whose testimony is desired and the matters on which examination is requested. If no particular person is named, the organization shall designate one or more agents to testify on its behalf, and may set forth the matters on which each will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The witness shall be placed under oath by a disinterested person qualified to administer oaths by the laws of the United States or of the place where the examination is held, and the testimony taken by such person shall be recorded verbatim.

(d) During the taking of a deposition a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the hearing examiner for a ruling on his objections to the deposition conduct or proceedings. The hearing examiner may then limit the scope or manner of the taking of the deposition.

(e) The officer shall certify the deposition and promptly file it with the hearing examiner. Documents or true copies of documents and other items produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition.

(f) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 4.772 Use of depositions at hearing.

(a) Any part or all of a deposition, so far as admissible under § 4.780 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof as follows:

(1) Any deposition may be used for contradiction or impeachment of the deponent as a witness.

(2) The deposition of a party, or of an agent designated to testify on behalf of a party, may be used by an adverse party for any purpose.

(3) The deposition of any witness may be used for any purpose if the party offering the deposition has been unable to procure the attendance of the witness because he is dead; or if the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or if the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(b) If only part of a deposition is offered in evidence, the remainder becomes subject to introduction by any party.

(c) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

§ 4.773 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories after the notice of hearing has been filed. If the party served is a corporation, partnership, association, or governmental agency, an agent shall furnish such information as is available to the party.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within 30 days after the service of the interrogatories. The party submitting the interrogatories may move for an order under § 4.775 with respect to any objection to or other failure to answer an interrogatory.

(c) Interrogatories shall relate to any matter not privileged which is relevant to the subject matter of the hearing.

§ 4.774 Production of documents and things and entry upon land for inspection and other purposes.

(a) After the notice of hearing has been filed, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any designated documents, phonorecords, and other data compilations from which information can be obtained and which are in the possession, custody or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After the notice of hearing has been filed, any party may serve on any other party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 15 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections in which case the reason for each objection shall be stated. The party submitting the request may move for an order under § 4.775 with respect to any objection to or other failure to respond.

§ 4.775 Sanctions.

(a) A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order as follows:

(1) If a deponent fails to answer a question propounded or submitted under § 4.771(c), or a corporation or other entity fails to make a designation under § 4.771(b)(3), or a party fails to answer an interrogatory submitted under § 4.773, or if a party, under § 4.774 fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the hearing examiner may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) If a party or an agent designated to testify fails after proper service (1) to appear for his deposition, (2) to serve answers or objections to interrogatories submitted under § 4.773, or (3) to serve a written response to a request for inspection, submitted under § 4.774, the hearing examiner on motion may make such orders as are just, including those authorized under subparagraphs (1) and (2) of paragraph (b) of this section.

§ 4.776 Ex parte communications.

(a) Written or oral communications involving any substantive or procedural issue in a matter subject to these proceedings, directed to the hearing examiner, the Director, the Director, Office of Federal Contract Compliance, or the Director, Office of Hearings and Appeals, shall be deemed ex parte communications and are not to be considered part of any record or the basis for any official decision, unless the communication is made by motion pursuant to these rules.

(b) The hearing examiner shall not consult any person, or party, on any fact in issue or on the merits of the matter before him unless upon notice and opportunity for all parties to participate.

(c) No employee or agent of the Federal Government engaged in the investigation and prosecution of a proceeding governed by these rules shall participate or advise in the rendering of the recommended or final decision, except as witness or counsel in the proceeding.

PREHEARING

§ 4.777 Prehearing conferences.

(a) Within 15 days after the answer has been filed the hearing examiner will establish a prehearing conference date for all parties including persons or organizations whose petition requesting party status has not been ruled upon. Written notice of the prehearing conference shall be sent by the hearing examiner.

(b) At the prehearing conference the following matters, among others, shall be considered: (1) Simplification and delineation of the issues to be heard; (2) stipulations; (3) limitation of number of witnesses; and exchange of witness lists; (4) procedure applicable to the proceeding; (5) offers of settlement; and (6) scheduling of the dates for exchange of exhibits. Additional prehearing conferences may be scheduled at the discretion of the hearing examiner, upon his own motion or the motion of a party.

HEARING

§ 4.778 Appearances.

In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's proposed decision and to file exceptions to it.

§ 4.779 Purpose.

(a) The hearing is directed primarily to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing will be held in order to determine whether Respondent has failed to comply with one or more applicable requirements of Executive Order 11246, and rules, regulations, and orders thereunder. However, this shall not prevent the parties from entering into a stipulation of the facts.

(b) If all facts are stipulated, the proceedings shall go to conclusion in accordance with §§ 4.787 to 4.792.

§ 4.780 Evidence.

Formal rules of evidence will not apply to the proceeding. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded from the record of a hearing. Hearsay evidence shall not be inadmissible as such.

§ 4.781 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the hearing examiner.

§ 4.782 Testimony.

Testimony shall be given under oath by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 4.783 Objections.

Objections to evidence shall be timely, and the party making them shall briefly state the ground relied upon.

§ 4.784 Exceptions.

Exceptions to rulings of the hearing examiner are unnecessary. It is sufficient that a party, at the time the ruling of the hearing examiner is sought, makes known the action which he desires the hearing examiner to take, or his objection to an action taken, and his ground therefor.

§ 4.785 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 4.786 Official transcript.

An official reporter will be designated for all hearings. The official transcripts

of testimony and argument taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing examiner. Transcripts may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. Upon notice to all parties, the hearing examiner may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

POSTHEARING PROCEDURES

§ 4.787 Proposed findings of fact and conclusions of law.

Within 30 days after the close of the hearing each party may file, or the hearing examiner may request, proposed findings of fact and conclusions of law together with supporting briefs. Such proposals and briefs shall be served on all parties and amici. Reply briefs may be submitted within 15 days after receipt of the initial proposals and briefs. Reply briefs should be filed and served on all parties and amici.

§ 4.788 Record for decision.

The hearing examiner will make his recommended findings, conclusions, and recommended decision upon the basis of the record before him. The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, except the correspondence section of the docket, shall constitute the record.

§ 4.789 Recommended determination.

The hearing examiner shall, in an expeditious manner, rule on proposed findings and conclusions submitted by the parties; and shall make recommended findings, conclusions, and decision. These rulings and recommendations shall be certified, together with the record for decision, to the Director, Office of Hearings and Appeals, for his decision. The rulings, recommended findings, conclusions, and decision of the hearing examiner shall be served on all parties and amici curiae to the proceedings.

§ 4.790 Exceptions to recommended determination.

Within 30 days after receipt of the recommended determination, all parties to the proceeding may file with the Director, Office of Hearings and Appeals, exceptions to the recommended findings, conclusions and decision of the hearing examiner, together with supporting briefs. Service of such exceptions and briefs shall be made on all parties and amici. Such briefs may be responded to within 15 days of their receipt by the other parties. Responses shall be filed with the Director, Office of Hearings and Appeals, and served on all parties and amici.

§ 4.791 Record.

After expiration of the time for filing briefs and exceptions, the Director, Office of Hearings and Appeals, shall make a decision on the basis of the record before him. The record includes the record before the hearing examiner, the rulings, the recommended findings, conclusions and decision of the hearing examiner, and the exceptions and briefs filed subsequent to the hearing examiner's decision.

§ 4.792 Final decision.

The Director, Office of Hearings and Appeals, may affirm, modify, or set aside in whole or in part, the recommended findings, conclusions, and decision of the hearing examiner. The decision of the Director, Office of Hearings and Appeals, shall not be final without the approval of the Director, Office of Federal Contract Compliance, Department of Labor.

[FR Doc.71-16592 Filed 11-12-71;8:45 am]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Preparedness

[Economic Stabilization Reg. No. 1, Amdt. 6]

E.S. REG. 1—STABILIZATION REGULATIONS FOR PRICES, RENTS, WAGES, AND SALARIES

Exemption from Normal Rule Making Procedures

SECTION 1. The purpose of the amendment contained in section 2 is to recognize the continuing need for prompt determinations under OEP Economic Stabilization Regulation No. 1, hereinafter referred to as the regulation, by formalizing the finding that notice of proposed rule making and public procedure thereon were and are impracticable and contrary to the public interest.

SEC. 2. Section 7 of the regulation is hereby amended by adding a second paragraph thereto to read as follows:

Because of the need for prompt determinations, notice of proposed rule making and public procedure thereon have been found to be impracticable and contrary to the public interest.

Effective date. This regulation shall continue in full force and effect unless and until altered, amended, or revoked by the Cost of Living Council or by such competent authority as the Council may specify.

Dated: November 12, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.71-16755 Filed 11-12-71;3:59 pm]

[OEP Economic Stabilization Reg. 1, Circular No. 26]

SUPPLEMENTARY GUIDANCE FOR APPLICATION

Economic Stabilization Circular No. 26

This circular is designed for general information only. The statements herein are intended solely as general guides drawn from OEP Economic Stabilization Regulation No. 1 and from specific determinations and policy statements by the Cost of Living Council and do not constitute legal rulings applicable to cases which do not conform to the situations clearly intended to be covered by such guides.

NOTE: Provisions of this and subsequent circulars are subject to clarification, revision, or revocation.

This 26th circular covers determinations and policy statements by the Council through November 12, 1971.

APPENDIX I

ECONOMIC STABILIZATION CIRCULAR NO. 26

100. *Purpose.* (1) On August 15, 1971, President Nixon issued Executive Order No. 11615, as amended, providing for stabilization of prices, rents, wages, and salaries and establishing the Cost of Living Council, a Federal agency. The order delegated to the Council all of the powers conferred on the President by the Economic Stabilization Act of 1970, as amended. The effective date of the order was 12:01 a.m., August 16, 1971.

(2) By its Order No. 1, the Council delegated to the Director of the Office of Emergency Preparedness authority to administer the program for the stabilization of prices, rents, wages, and salaries as directed by section 1 of Executive Order No. 11615, as amended.

(3) Executive Order No. 11627 was issued on October 15, 1971, to further implement the President's stabilization program. The order superseded Executive Order No. 11615 of August 15, 1971, but provided in section 13 that all orders, regulations, circulars, or other directives issued and all other actions taken pursuant to Executive Order No. 11615, as amended, are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless and until altered, amended, or revoked by the Council or by such competent authority as the Council may specify.

(4) The purpose of this circular, the 26th in a series to be issued, is to furnish further guidance to Federal officials and the public in order to promote the program.

200. *Authority.* (1) Relevant legal authority for the program includes the following:

The Constitution.
Economic Stabilization Act of 1970, Public Law 91-379, 84 Stat. 799; Public Law 92-15, 85 Stat. 38.
Executive Order No. 11615, as amended, 36 F.R. 15127, August 17, 1971.
Cost of Living Council Order No. 1, 36 F.R. 16215, August 20, 1971.
OEP Economic Stabilization Regulations No. 1, as amended, 36 F.R. 16515, August 21, 1971.
Executive Order No. 11627, as amended, 36 F.R. 20139, October 16, 1971.

(2) Because of the need for prompt determinations, notice of proposed rule making and public procedure thereon have been found to be impracticable and contrary to the public interest.

(3) The rules and guidelines established by regulation, order, directive, or circular provisions for stabilization of wages, prices, and rents will not expire

automatically on November 13. Changes will occur only through explicit action by the Pay Board, the Price Commission, the Cost of Living Council or other competent authority.

Executive Order No. 11627 of October 15, 1971, superseded Executive Order No. 11615 of August 15, 1971. The new Executive order contains no expiration date, and section 1(a) states, in part:

Pending action under this order, and except as otherwise provided in section 202 of the Economic Stabilization Act of 1970, as amended, prices, rents, wages, and salaries are stabilized effective as of August 16, 1971, at levels not greater than the highest of those pertaining to a substantial volume of actual transactions by each individual, business, firm, or other entity of any kind during the 30-day period ending August 14, 1971, for like or similar commodities or services. If no transactions occurred in that period, the ceiling will be the highest price, rent, salary, or wage in the nearest preceding 30-day period in which transactions did occur. No person shall charge, assess, or receive, directly or indirectly, in any transaction, prices or rents in any form higher than those permitted hereunder, and no person shall, directly or indirectly, pay or agree to pay, in any transaction, wages or salaries in any form, or to use any means to obtain payment of wages and salaries in any form, higher than those permitted hereunder, whether by retroactive increase or otherwise.

300. *General guidelines.* (1) The guidance provided in this circular is in the nature of additions to or clarifications of previous determinations and policy statements by the Cost of Living Council covered in previous OEP Economic Stabilization Circulars.

(2) The numbering system used in this circular corresponds to that used in OEP Economic Stabilization Circulars Nos. 101 and 102.

500. *Wage and salary guidelines.*

502. *Specific.* (1) Severance pay for an employee leaving a job during the freeze—including pay for accrued sick and vacation time—shall not be prejudiced by the freeze and should be paid on the basis of the terms of employment that would have applied if the freeze had not occurred.

503. *Promotions and increased training.* (1) The Council has previously ruled that increases in pay are permitted during the freeze for bona fide promotions that constitute an advancement to an established job with greater responsibility. Accordingly, pay increases are permitted for reclassification of an existing job—i.e., a change in title—only where such reclassification represents a bona fide promotion. That is

(a) The change must be accomplished through a formal reclassification program that was in place before the freeze,

(b) The new job title of the employee must already be in existence in the organization (i.e., with a ceiling wage attached to it), and

(c) The duties and responsibilities of the employee under the new title must be significantly greater than those required under the previous title.

504. *Fringe benefits.* (1) Employers, as part of the compensation for a particular job, may issue stock options to employees for the same number of shares as in the base period (adjusted, if necessary, for stock splits and stock dividends) and under the same terms and conditions.

NOTE: This subparagraph supersedes subparagraph 502(14) of OEP Economic Stabilization Circular No. 102 and subparagraph 504(1) of OEP Economic Stabilization Circular No. 22, as well as subparagraph 504(3) of OEP Economic Stabilization Circular No. 101.

(2) In a firm where new employees are informed that after they complete 1 year's service they are entitled to 2 weeks' vacation with pay, this 1-year requirement is being met, in many cases, during the freeze period. These employees may receive and use such 2 weeks' vacation during the freeze period.

NOTE: This subparagraph supersedes subparagraph 504(8) of OEP Economic Stabilization Circular No. 102.

1001. *Effective date.* (1) This circular shall continue in full force and effect unless and until altered, amended, or revoked by the Cost of Living Council or by such competent authority as the Council may specify.

Dated: November 12, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.71-16754 Filed 11-12-71;3:59 pm]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGFR 71-137]

NEUSE AND TRENT RIVERS, N.C.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering amending the regulations for the Route 17 highway bridge across the Neuse River and the Route 70 highway bridge across the Trent River, both at New Bern, to add closed periods on Sundays from May 30 through September 7 and Memorial Day, Fourth of July, and Labor Day. This amendment is being considered because of heavy vehicular traffic during Sundays and the holidays named.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23705. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Fifth Coast Guard District.

The Commander, Fifth Coast Guard District, will forward any comments received before December 17, 1971, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.352 and § 117.353 to read as follows:

§ 117.352 Neuse River, N.C.; U.S. 17 highway bridge at New Bern.

(a) The draw shall open on signal as prescribed in § 117.240, except that from May 30 through September 7, the draw may remain closed—

(1) From Monday through Friday from 6:30 a.m. to 7:30 a.m. and 4:30 p.m. to 5:30 p.m., and

(2) Sundays and Federal holidays from 2 p.m. to 7 p.m., except that the draw shall open at 4 p.m. and 6 p.m. for any vessels waiting to pass.

(b) The draw shall open at any time on the signal of four short blasts for public vessels of the United States, State, or local vessels used for public safety, tugs with tows and vessels in distress.

§ 117.353 Trent River, N.C.; U.S. 70 highway bridge at New Bern.

(a) The draw shall open on signal as prescribed in § 117.240 except that from May 30 through September 7, the draw may remain closed—

(1) From Monday through Friday from 6:30 a.m. to 7:30 a.m. and 4:30 p.m. to 5:30 p.m., and

(2) Sundays and Federal holidays from 2 p.m. to 7 p.m., except that the draw shall open at 4 p.m. and 6 p.m. for any vessels waiting to pass.

(b) The draw shall open at any time on the signal of four short blasts for public vessels of the United States, State, or local vessels used for public safety, tugs with tows and vessels in distress.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Dated: November 5, 1971.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.71-16606 Filed 11-12-71;8:46 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-RM-28]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Hugo, Colo., transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station, Post Office Box 7213, Denver, CO 80207. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10255 East 25th Avenue, Aurora, CO 80010.

An additional 9,500-foot MSL transition area is necessary for maximum utilization of radar capability in vectoring aircraft to and from the terminal areas at Denver, Colorado Springs, and Pueblo, Colo. Also, radar service will be provided high performance military aircraft conducting training activities within the area at altitudes 10,000 MSL and above.

The 9,500-foot MSL transition area will replace the 8,500-foot MSL transition area presently designated east of Hugo VOR.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (36 F.R. 2140) the description of the Hugo, Colo., transition area is amended by deleting all after "* * * and that airspace east of Hugo, * * *" and substitute "extending upward from 9,500 feet MSL, bounded on the north by V-4, on the east by V-17, on the southeast by V-216, on the southwest by V-263, and on the northwest by V-169, excluding the airspace within Federal airways and the Pueblo and Colorado Springs, Colo., transition areas * * *" therefor.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Aurora, Colo., on November 5, 1971.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.71-16605 Filed 11-12-71;8:46 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 9001]

MISSOURI

Notice of Filing of Plat of Survey

1. The plat of survey of the following described land will be officially filed in the Eastern States Land Office, Silver Spring, Md., effective at 10 a.m. on December 14, 1971.

FIFTH PRINCIPAL MERIDIAN

T. 34 N., R. 14 E.,
Sec. 20, lot 5.

The area described contains 0.70 acres.

2. This plat represents the survey of Grand Tower Rock Island located along the western bank of the Mississippi River. This island of rock resembles hard slate and has an elevation of approximately 90 feet above mean high water level. Small pine trees grow on the top of this rock. There is no evidence of improvements, present use or occupancy of this island.

3. Although it was not included in the original township surveys made in 1817 and 1818, this island is depicted upon the official plat of those surveys approved March 3, 1853. The character of the island attests to its existence on August 10, 1821, when Missouri was admitted into the Union, and at all times since. It is well over 50 percent upland within the interpretation of the Swamp Land Act of September 28, 1850.

4. Grand Tower Rock Island was reserved for public purposes by order of the President of the United States dated February 24, 1871. In addition, all islands in the Mississippi River were withdrawn by the Secretary of the Interior on April 10, 1891, at the request of the Secretary of War, in the interest of navigation.

5. All inquiries relating to this land should be sent to the Manager, Eastern States Land Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

DORIS A. KOIVULA,
Manager.

NOVEMBER 8, 1971.

[FR Doc.71-16607 Filed 11-12-71;8:46 am]

[ES 9478]

WISCONSIN

Notice of Filing of Plat of Survey

1. The plat of survey of the following described land will be officially filed in the Eastern States Land Office, Silver Spring, Md., effective at 10 a.m. on December 11, 1971:

FOURTH PRINCIPAL MERIDIAN

T. 33 N., R. 10 E.,
Sec. 36, lot 20.

The area described contains 0.24 acre.

2. This is a supplemental plat prepared to give area and designation to an island in Lower Bass Lake not previously shown on an official plat. This plat is based entirely on the record of an island survey in section 36 made by C. M. Pidgeon, U.S. Surveyor, in 1911, and a dependent resurvey and extension survey in section 36 made by A. W. Brown, U.S. Cadastral Engineer, in 1931.

3. In accordance with the field notes of the survey made by C. M. Pidgeon, approved January 3, 1913, the island is classified as being over 50 percent upland in character within the interpretation of the Swamp Land Act of September 28, 1850.

4. Except for valid existing rights, this land will not be open to any applications for use or disposition under the public land laws until it has been classified and a further order is issued.

5. All inquiries relating to this land should be sent to the Manager, Eastern States Land Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

DORIS A. KOIVULA,
Manager.

NOVEMBER 8, 1971.

[FR Doc.71-16610 Filed 11-12-71;8:46 am]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

WALKERTON LIVESTOCK SALES, INC., ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

Walkerton Livestock Sales, Inc., Etna Green, Ind.
Johnson Livestock Market, Webster City, Iowa.
Herington Livestock Auction Co., Inc., Herington, Kans.
Lockhart Auction, Incorporated, Lockhart, Tex.
Menard County Commission Company, Inc., Menard, Tex.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, within 15 days after publication in the FEDERAL REGISTER.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 9th day of November, 1971.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.71-16622 Filed 11-12-71;8:47 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-270]

AMERICAN PRESIDENT LINES, LTD.

Notice of Application

Notice is hereby given that American President Lines, Ltd., has filed an application requesting written permission under section 805(a) of the Merchant Marine Act, 1936, as amended, to carry passengers, their baggage, and automobiles in domestic trade between any U.S. ports in connection with cruises authorized pursuant to section 613 of the Act. The application was dated October 19, 1971.

Interested parties may inspect this application on the Office of Subsidy Administration, Maritime Administration, Room 4888, Department of Commerce Building, 14th and E Streets NW., Washington, DC.

Any person, firm, or corporation having any interest, within the meaning of section 805(a), in such application and desiring to be heard on issues pertinent to section 805(a), or desiring to submit comments or views concerning the application must, by close of business on November 26, 1971, file same with the Secretary, Maritime Subsidy Board/Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied upon for relief.

If no petitions for leave to intervene are received within the specified time, or if it is determined that petitions filed do

not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board/Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for December 1, 1971, in Room 4896, Department of Commerce Building, 14th and E Streets NW., Washington, DC. The purpose of the hearing will be to receive evidence under section 805 (a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act.

By order of the Maritime Subsidy Board/Maritime Administration.

Dated: November 9, 1971.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 71-16624 Filed 11-12-71;8:47 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 71-140]

SAN FRANCISCO BAY

Security Zone

By virtue of the authority vested in the Commandant, U.S. Coast Guard, by Executive Order 10173, as amended (33 CFR Part 6), sec. 6(b)(1), 80 Stat. 937, 49 U.S.C. 1655(b)(1), 49 CFR 1.46(b) and the redelegation of authority to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters as contained in the FEDERAL REGISTER of September 30, 1971 (36 F.R. 19160), I hereby affirm for publication in the FEDERAL REGISTER the order of Mark A. Whalen, Rear Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District, who has exercised authority as District Commander, such order reading as follows:

SAN FRANCISCO BAY

SECURITY ZONE

My order of June 16, 1971, published at 36 FEDERAL REGISTER 11822, June 19, 1971, established a security zone in the waters of San Francisco Bay around Alcatraz Island commencing at 1200 P.d.t., June 16, 1971. That security zone is terminated at 1200 P.s.t., November 15, 1971.

Dated: November 11, 1971.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 71-16655 Filed 11-12-71;8:48 am]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 22990, 23741; Order 71-11-35]

EASTERN AIR LINES, INC.

Order To Show Cause and Granting Temporary Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of November 1971.

By application in Docket 22990, Eastern Air Lines, Inc. (Eastern), has requested amendment of its certificate of public convenience and necessity for route 10 so as to delete Albany, Ga., therefrom.[1] On August 20, 1971, Eastern filed a combined motion for issuance of a show cause order and application for authority to suspend service temporarily pendente lite.[2]

Upon consideration of Eastern's request and other relevant facts, we have decided to issue an order to show cause, proposing to grant the requested deletion, and to grant Eastern authority to suspend service at Albany, pendente lite.

We tentatively find and conclude that the public convenience and necessity require the amendment of Eastern's route 10 so as to delete Albany, Ga., therefrom. In support of our ultimate conclusion, we tentatively find and conclude as follows:

Deletion of Eastern's service will not leave Albany without certificated air service. Southern, the principal carrier at Albany, increased its Albany operations on May 1, 1971, when Eastern reduced its service.[3] Southern has indicated its intent to further increase service by four nonstop flights in the Atlanta market on October 31, 1971, and to add an additional nonstop round trip if Eastern's service is terminated. It appears that Southern has and would continue to fill any service void created by Eastern's reduction or elimination of service.[4] Since the objections of the Albany parties have been withdrawn, it appears that they are satisfied that the service provided by Southern will be sufficient for their needs. Finally, it appears that both Eastern and Southern will be financially benefited by our proposed action. Eastern estimates a $138,000 saving by elimination of its Atlanta-Albany service. If the proposed deletion were granted, Southern forecasts a calendar 1972 net profit after return and taxes of $51,567, according to prescribed Subpart K methodology. These estimates appear reasonable.[5]

Interested persons will be given 20 days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained.

Turning to the application for temporary relief, we find that it is in the public interest to permit Eastern to temporarily suspend service at Albany, pendente lite. For reasons set forth above, we believe that Eastern has made a sufficient preliminary showing that its suspension, coupled with Southern's planned service expansion, will not have an adverse effect on the overall service at Albany and that suspension will result in savings to Eastern.[6]

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and amending Eastern Air Lines, Inc.'s, certificate of public convenience and necessity for route 10 so as to delete Albany, Ga., from segments 2 and 5;

2. Any interested persons having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth herein shall, within 20 days after service of a copy of this order, file with the Board and serve upon all persons made parties to this proceeding a statement of objections together with a summary of testimony, statistical data, and

[1] Answers were filed by the city of Albany and Dougherty County, Ga. (Albany Parties), objecting to the deletion and requesting a public hearing in Albany. On Aug. 18, and Aug. 27, 1971, after consultations among Eastern, the Albany parties and Southern Airways, Inc. (Southern), the Albany parties withdrew their objections.

[2] In an answer to Eastern's motion filed Sept. 9, 1971, Southern supports deletion of Eastern's authority.

[3] As of May 1, 1971, Eastern reduced its service between Albany and Atlanta from three daily round trips to a single daily Atlanta round trip. In contrast, Southern provides nine daily flights in the Albany-Atlanta market, six of which are nonstop. In addition, Air South, an air taxi, provides two daily round trips between Albany and Atlanta.

[4] Deletion of Eastern would result in the elimination of certificated air service between Albany and Macon. However, Eastern indicated that traffic in that market amounted to less than one passenger per day in June 1971.

[5] We find that both carriers are fit, willing, and able properly to perform the air transportation resulting herein and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

[6] We shall authorize Eastern to suspend service for a temporary period terminating no later than 60 days following final Board decision on Eastern's application filed in Docket 22990.

other evidence expected to be relied upon to support the stated objections; [7]

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein;

5. Eastern Air Lines, Inc., be and it hereby is authorized to suspend service temporarily at Albany, Ga., for 2 years, or until 60 days following final action in Docket 22990, whichever occurs first;

6. A copy of this order shall be served upon Eastern Air Lines, Inc., Southern Airways, Inc., Mayor, city of Albany, Ga., County Administrator, Dougherty County, Ga., Mayor, city of Macon, Ga., Mayor, city of Atlanta, Ga., and Governor, State of Georgia; and

7. This order may be amended or revoked at any time in the discretion of the Board without a hearing.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-16616 Filed 11-12-71;8:46 am]

[Docket No. 23694]

SERVICIO AEREO DE HONDURAS, S.A. (SAHSA)

Foreign Air Carrier Permit; Notice of Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled proceeding now assigned to be held on November 17, 1971, is postponed indefinitely. The postponement is at the request of the applicant.

Dated at Washington, D.C., November 9, 1971.

[SEAL] WILLIAM H. DAPPER,
Hearing Examiner.

[FR Doc.71-16614 Filed 11-12-71;8:46 am]

[Docket No. 23785; Order 71-11-36; Amdt. 3]

ALL U.S. AND FOREIGN AIR CARRIERS

Order Stabilizing Fares, Rates, and Charges for Passengers and Property

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of November 1971.

By Order 71-8-78 dated August 17, 1971, the Board issued its order stabilizing fares, rates, and charges for passengers and property, so as to assure the implementation of Executive Order 11615 with respect to air transportation. By Order 71-9-51 dated September 13, 1971, the Board issued Amendment No. 1 to its stabilization order to reflect subsequent economic stabilization regulations and rulings that (1) prices need not be established at levels less than those prevailing May 25, 1970, and (2) the period of the freeze imposed by the Executive Order is deemed to expire November 13, 1971. On October 27, 1971, the Board issued Amendment No. 2 to its stabilization order (Order 71-10-121) to reflect rulings of the Cost of Living Council that foreign air carrier rates are not subject to the freeze and that rates of U.S. air carriers, both inbound and outbound, may be raised to reflect increased costs arising from currency revaluation.

Subsequent to the issuance of these Board orders, Economic Stabilization Regulation No. 1, freezing prices, rents, and wages, was amended to extend the effective date of that regulation beyond November 13, 1971, and to continue such regulation in full force and effect until altered, amended, or revoked by the Cost of Living Council or by such competent authority as the council may specify.[1] The Cost of Living Council announced that the provisions of the economic stabilization program, which have been in force since August 15, 1971, will continue until they are specifically modified by the Pay Board, Price Commission, or the Cost of Living Council, that changes will occur only through explicit action taken by competent authority, and that it is anticipated that initial modifications to the freeze rules will be announced prior to November 13, 1971. In this circumstance, the rates of air carriers remain frozen unless and until explicit action is taken to modify or remove such freeze. In view of the President's Executive Order of October 15, 1971, Amendment No. 5 to Economic Stabilization Regulation No. 1 and announcements by the Cost of Living Council, the Board finds that further amendments are required in its stabilization order to assure the implementation of the Executive order and applicable regulations by air carriers and to assure that the air carriers' tariffs are consistent therewith.

There presently are on file with the Board various tariffs containing rate increases marked for effectiveness on or after November 14, 1971. These rates cannot take effect if the freeze continues or unless permitted under subsequent modifications therein. Furthermore, it may not be possible to determine immediately whether a particular proposed rate increase will conform to the modifications. In these circumstances the Board has concluded that it should extend the present moratorium on tariff filings beyond November 14, 1971, and it will accept only those filings which conform to those permitted under the freeze and any subsequent modifications.

To achieve this purpose, the Board will continue to permit carriers to withdraw tariffs inconsistent with the stabilization regulations on 1 day's notice, and will keep in effect the delegation to the Chief, Tariffs Section, to issue such rejection notices and take such other action as is necessary to implement its order.

In recognition of the fact that modifications may be made to the freeze regulations at any time, and to provide the necessary flexibility to meet such situations without the necessity for additional amendments to our stabilization order for each modification as may be made to the freeze regulations, the amended order will permit, with Board authorization, tariffs to be filed containing rates above the level of the base period, if consistent with modified freeze regulations and the Board's tariff filing regulations. This will provide flexibility to the Board and the carriers to meet changing circumstances consistent with the Government's stabilization program.[2]

The amendments described above will modify the existing provisions of ordering paragraph 1 of the Board's stabilization order, as amended. For the convenience of all concerned this order will set forth in full the ordering paragraphs of our stabilization order, as now amended.

Accordingly, it is ordered, That:

The ordering paragraphs of Order 71-8-78, as amended by Orders 71-9-51 and 71-10-121 are hereby amended to read in their entirety as follows:

1. Unless otherwise authorized by the Board, each air carrier shall:

a. Make no increases directly or indirectly, in fares, rates, and charges in air transportation services above the highest in effect during the 30-day period ending August 14, 1971: *Provided,* That fares, rates, and charges need not be established at levels less than those prevailing May 25, 1970: *And provided,* That rates, fares, and charges of U.S. air-carriers, both inbound and outbound, may be raised to reflect increased costs arising from currency revaluation.

b. Withdraw all proposed tariffs or effective tariffs, including expiry provisions, which would directly or indirectly effect an increase in fares, rates, and charges, except as may be permitted pursuant to ordering paragraph 1a, above the highest in effect during the 30-day period ending August 14, 1971: *Provided,* That this requirement shall not apply to tariffs which would establish rates, fares, and charges at levels the same as or less

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[7] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further such motions, requests, or petitions for reconsideration of this order will be entertained.

[1] Amendment 5 dated Oct. 29, 1971, to reflect Executive Order No. 11627 of Oct. 15, 1971, which superseded Executive Order 11615.

[2] It is the intention of this amendment that the Board's authorization for such tariff filings will be granted only where it clearly appears that the tariff filing is consistent with a modification to the freeze regulations, and that such authorization may be granted by the Chief, Tariffs Section, pursuant to ordering paragraph 3 of the Board's stabilization order. This amendment is for the purpose of enabling air carriers to file tariffs consistent with the applicable stabilization regulations. The Board, of course, will evaluate such tariffs consistent with its ratemaking criteria.

than those prevailing May 25, 1970, for service of the same class.

2. Special tariff permission is hereby granted to effect such withdrawals on 1 day's notice.

3. The Chief, Tariffs Section, is hereby authorized and directed to issue such rejection notices and to take such other action as is necessary to implement this order.

4. This order shall be served upon all air carriers and foreign air carriers.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-16617 Filed 11-12-71;8:47 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Director, Policy and Plans, National Park Service.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-16611 Filed 11-12-71;8:46 am]

DEPARTMENT OF THE INTERIOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant to the Under Secretary for Environmental Planning, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-16612 Filed 11-12-71;8:46 am]

FEDERAL POWER COMMISSION

[Docket No. E-7676]

CITIES OF LAFAYETTE AND PLAQUEMINE, LA. ET AL.

Order Accepting Complaint and Prescribing Hearing Procedures

NOVEMBER 4, 1971.

The cities of Lafayette and Plaquemine, La., versus Gulf States Utilities Co., Louisiana Power and Light Co., Central Louisiana Electric Co.

On September 30, 1971, the cities of Lafayette and Plaquemine, La. (cities), filed a protest and petition to intervene in the matter of Gulf States Utilities Co., Docket No. E-7663, which involves an application to issue and sell securities pursuant to section 204 of The Federal Power Act.

The cities incorporate by reference the protest and petition to intervene filed by the cities on November 2, 1970, in Docket No. E-7567. Among other things the cities set forth the following allegations:

The cities allege that Gulf States Utilities Co. along with Louisiana Power and Light Co. and Central Louisiana Electric Co. engaged in a conspiracy to suppress and defeat an interconnection and pooling agreement between the cities, Dow Chemical Co. and Louisiana Electric Corporative, Incorporation (LEC). LEC, a generating and transmission cooperative financed by The Rural Electrification Administration, is made up of 12 electric distribution cooperatives, all of which operate in Louisiana.

In September 1964, the REA undertook to make $56.5 million loan to LEC for construction of a 200 MW generating station with 1,611 miles of transmission lines through which the LEC could serve eight of its 12 member cooperatives. Prior to this time, the three companies had been selling power to those cooperatives. According to cities the companies succeeded in delaying the actuarial use of the funds thus provided for more than 5 years, through a series of lawsuits filed by the companies themselves and by the companies' attorneys on behalf of other putative plaintiffs.

Cities alleged that in August 1968, the cities, Dow and LEC executed an interconnection and pooling agreement providing for the interconnection of their generating systems and a long term pooling and coordination arrangement, with a minimum term of 10 years. The agreement, approved by the REA administrator on November 19, 1968, provided for a combined planning of load requirements for the cities, the LEC members and Dow. It meant, according to cities, assurance of a market for all surplus capacity and secondary energy, as well as coordination, and substantial savings, in the construction of new generators, in sum, economics of scale, plus benefits in the form of backup for each system and energy interchanges.

Cities stated that by engaging in frivolous and repetitive litigation, and by mounting a public relations drive and lobbying effort against LEC, the three companies were able to hold up disbursement of the loan money until January, 1969, when a new REA administrator was sworn into office. This prevented the members of the new pool from going ahead with their agreement. Furthermore, a rise in costs during the 5-year delay raised a serious question whether the original loan would suffice to finance all of the LEC's generation and transmission needs. Therefore, the new Administrator advanced funds only for the LEC generating station, but not for transmission lines, and LEC was left to negotiate with the three companies for use of their transmission lines.

Cities contend that the conspiracy continued during these negotiations. They say that the companies, while willing to supply transmission of power to some of the LEC members, refused to supply transmission services between pool members. They further say that the companies demanded that LEC limit its power capacity to the 200 MW already planned, and that the companies supply all further power needs of the 12 cooperatives, thus precluding further LEC expansion to serve its members' expanding load.

On October 12, 1971, the applicant answered the protest and petition to intervene denying violations of anti-trust laws, the Federal Power Act, or the Public Utilities Holding Company Act of 1935 and stating further that the allegations of the cities did not allege circumstances or activities other than those raised in their petition to intervene in Docket No. E-7567, which were unresolved under the Appeal by the cities to the U.S. Court of Appeals for the District of Columbia Circuit. Applicant further stated that if the Courts ultimately sustain the Commission's action in Docket No. E-7567, then such action would also be proper in the present proceeding.

On October 12, 1971, the U.S. Court of Appeals for the District of Columbia Circuit remanded the Commission's order in Docket No. E-7567.

Upon review of the cities' petition and the reply thereto by Gulf States and in accordance with our order issued simultaneously herewith in Docket No. E-7663, it is our view that the matter raised by the cities should be handled as a complaint under section 306 of the Federal Power Act.

The cities should be afforded the opportunity to present evidence in support of their allegations and to show under Part II of the Federal Power Act what prospective relief the Commission can grant, assuming cities sustains the burden of proving such allegations. Accordingly, the above-mentioned protest and petition and reply of Gulf States Utilities Co. will be treated as a complaint and answer thereto, respectively, and a public hearing will be held in order to afford all parties an opportunity to present evidence on the issues raised therein.

At such a hearing, the cities, as proponents, shall have the burden of proving that such acts and practices of Gulf States Utilities Co. are continuing or are likely to continue, and to what extent the Commission has jurisdiction to remedy such acts and practices.

The Commission finds:

(1) It is necessary and appropriate in the proper exercise of the Commission's responsibilities under the Federal Power Act that the above described issues raised by the cities in their protest and petition filed in Docket No. E-7663 be investigated in the context of a complaint proceeding to determine what relief, if any, may be granted by the Commission under Part II of the Federal Power Act.

(2) The expeditious disposition of this proceeding will be furthered by the submission of prepared testimony and exhibits by the cities in support of their allegation on or before January 3, 1972.

(3) The expeditious disposition of this proceeding will be further effectuated by holding a hearing on February 8, 1972.

The Commission orders:

(A) Pursuant to the authority of The Federal Power Act, particularly sections 202, 306 and 307 thereof and the Commission's rules of practice and procedure, an investigation is hereby instituted to determine the justification of the protest by the cities and, if necessary, to prescribe such relief as is appropriate within the boundaries of the Federal Power Act.

(B) Inasmuch as cities' allegations are directed to Louisiana Power and Light Co. and Central Louisiana Electric Co., as well as to Gulf States Utilities Co., these public utilities are named parties to this proceeding. A copy of the cities' complaint shall be served on Louisiana Power and Light Co. and Central Louisiana Electric Co. and their response thereto shall be filed with the Commission within 15 days from the date of issuing this order.

(C) Any person desiring to be heard or to make any protest with reference to the matters presented in this proceeding should, on or before December 1, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's rules.

(D) The cities shall file with the Commission and serve on all parties to the proceeding, including the Staff of the Commission, direct testimony and exhibits in support of its allegations on or before January 3, 1972.

(E) A public hearing on the issues presented will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC, commencing at 10 a.m. (e.s.t.), on February 8, 1972.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-16594 Filed 11-12-71;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN HOLDING CORPORATION OF NEW JERSEY

Order Approving Action To Become Bank Holding Company

In the matter of the application of American Holding Corporation of New Jersey, Princeton, N.J., for approval to become a bank holding company through the acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to American National Bank & Trust, Montclair, N.J., and 100 percent of the voting shares of Princeton Bank and Trust Co., Princeton, N.J.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by American Holding Corporation of New Jersey, Princeton, N.J., for the Board's prior approval of action to become a bank holding company through the acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to American National Bank & Trust, Montclair, N.J. (American Bank), and 100 percent of the voting shares of Princeton Bank and Trust Co., Princeton, N.J. (Princeton Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and the Commissioner of Banking of the State of New Jersey. The Comptroller offered no objection to approval of the application and the Commissioner recommended approval.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 18, 1971 (36 F.R. 18686), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant is a newly organized corporation. Consummation of this proposal herein would result in applicant controlling $418.9 million in deposits, representing 2.8 percent of total commercial bank deposits in the State, and applicant would become the ninth largest banking organization and the seventh largest bank holding company in New Jersey. (Unless otherwise noted, all banking data are as of December 31, 1970, adjusted to reflect holding company formations and acquisitions approved by the Board through September 30, 1971.)

American Bank ($341.4 million deposits), the 12th largest bank in New Jersey, has 32 banking offices and operates throughout the First Banking District. American Bank operates primarily in the Newark banking market, which is approximated by Essex County, a small part of Hudson County, most of Union County and the eastern half of Morris County. American Bank controls 7.5 percent of commercial bank deposits, and is the fourth largest bank in that market. (Banking data concerning market control and size are as of June 30, 1971.)

Princeton Bank ($77.5 million deposits), headquartered in the Second Banking District, has eight banking offices, and operates in the Trenton banking market. Princeton Bank controls 7.7 percent of commercial bank deposits and is the fourth largest bank in the Trenton banking market, which is approximated by Mercer County, plus the communities adjacent to Mercer County located in Hunterdon, Somerset, Middlesex, Monmouth, and Burlington Counties in New Jersey and Bucks County in Pennsylvania. (Banking data concerning market control and size are as of June 30, 1971.)

American Bank and Princeton Bank do not compete with each other to any significant extent, and the development of such competition in the future appears unlikely. The nearest offices of the two banks are 28 miles apart, and New Jersey law prohibits either bank from branching or merging across Banking District lines. It appears that the affiliation of the two banks in a holding company would not have any adverse effects on other banks in the Newark or Princeton markets, and may promote competition in the Princeton market by enabling Princeton Bank to become a more effective competitor. On the basis of the record before it, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial and managerial resources of each bank appears satisfactory. It appears that applicant would begin operations in satisfactory condition and with competent management. Applicant's future prospects, which are largely dependent upon those of its two subsidiaries, also appear favorable. Although there is no evidence that the existing banking needs of the communities involved are not being met, affiliation of Princeton Bank in the holding company would enable it to increase its lending limit and offer a wider range of specialized banking services. These considerations relative to the convenience and needs of the communities to be served lend some weight toward approval. It is the Board's judgment that the proposed transaction is in the public interest and should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above: *Provided,* That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16596 Filed 11-12-71;8:45 am]

COMMERCE BANCSHARES, INC.

Order Approving Acquisition of Bank Stock By Bank Holding Company

In the matter of the applicatoin of Commerce Bancshares, Inc., Kansas City, Mo., for approval of acquisition of more than 80 percent of the voting shares of Blue Hills Bank of Commerce, Kansas City, Mo.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Commerce Bancshares, Inc., Kansas City, Mo., a registered bank holding company, for the Board's prior approval of the acquisition of more than 80 percent of the voting shares of Blue Hills Bank of Commerce, Kansas City, Mo. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Commissioner of Finance of the State of Missouri and requested his views and recommendation. The Commissioner indicated that his office had no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on August 12, 1971 (36 F.R. 15074), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. The time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources of the applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant, the third largest bank holding company and third largest banking organization in Missouri, controls 19 banks with aggregate deposits of $880.8 million, representing 7.7 percent of the total commercial bank deposits in the State. (All banking data are as of December 31, 1970, adjusted to reflect bank holding company formations and acquisitions approved by the Board through August 31, 1971.) Upon consummation of the proposal herein, applicant's share of deposits in the State would increase only slightly, and its position relative to the State's other banking organizations would remain unchanged.

Bank ($12.3 million deposits), one of the smaller banks in the Kansas City banking market, is the eighth largest of 11 banks in its primary service area, which is approximated by a 25-square-mile area just south of downtown Kansas City. Applicant's lead bank, Commerce Bank of Kansas City, is located downtown 6½ miles from Bank, and its service area fully encompasses that of Bank. Such factors would usually indicate that competitive considerations would weigh for denial of the application; however, other facts in the record provide evidence that there is no meaningful competition between Bank and any of applicant's subsidiary banks. Shareholders of applicant control approximately 78 percent of Bank's stock. This close relationship has existed since Bank's inception, and it appears that the relationship would continue to exist regardless of the Board's action on the present application. Additionally, Bank, which has experienced slow growth during the last several years, has not been an effective competitor to the other area banks due to its small size. On the basis of the foregoing, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area.

Considerations relating to financial and managerial resources and prospects as they relate to applicant and its subsidiaries are satisfactory and consistent with approval of the application and lend some weight toward approval as they relate to Bank, since applicant would be able to solve Bank's management succession problem by providing it with greater management depth. Although the major banking needs of the Bank's service area are being met by existing institutions, a portion of that area has experienced economic decline, and applicant intends to assist Bank in offering a full range of banking services, including urban and business development services, in an attempt to revitalize the area. Thus, considerations relating to the convenience and needs lend additional weight toward approval. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above: *Provided,* That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16597 Filed 11-12-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

CONNECTICUT BANK AND TRUST CO.

Order Approving Application for Merger of Banks Under Bank Merger Act

In the matter of the application of the Connecticut Bank and Trust Co., Hartford, Conn., for approval to merge with the North Side Bank and Trust Co., Bristol, Conn.

On November 5, 1970, the Board of Governors issued an order denying the application of the Connecticut Bank and Trust Co. for prior approval of a merger with the North Side Bank and Trust Co. pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), and, incident thereto, for approval under section 9 of the Federal Reserve Act (12 U.S.C. 321) of the establishment of branches. 1970 Federal Reserve Bulletin 826.

On June 25, 1971, the Board granted a request for reconsideration filed with the Board by the Connecticut Bank and Trust Co. The request for reconsideration, which was filed pursuant to § 262.3 (f)(6) of the Board's rules of procedure (12 CFR 262.2(f)(6)), was granted because the request presented relevant facts (concerning the relevant market in which the banks operate) that, for good cause shown, were not previously presented to the Board, and reconsideration otherwise appeared appropriate.

It is hereby ordered, For the reasons set forth in the accompanying statement,[1] that the order of November 5, 1970, be and hereby is vacated, and

It is further ordered, That the application be and hereby is approved: *Provided,* That the merger so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Boston pursuant to delegated authority.

By order of the Board of Governors,[2] November 4, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16593 Filed 11-12-71;8:45 am]

HURON COUNTY BANKING CO.

Order Approving Application for Merger of Banks Under Bank Merger Act

In the matter of the application of The Huron County Banking Co., Norwalk, Ohio, for approval of merger with the Savings and Loan Banking Co., New London, Ohio.

There has come before the Board of Governors, pursuant to the Bank Merger

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Boston. Dissenting statement of Governors Robertson, Maisel, and Brimmer filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, and Sherrill. Voting against this action: Governors Robertson, Maisel, and Brimmer.

Act (12 U.S.C. 1828(c)), an application by the Huron County Banking Co., Norwalk, Ohio (Norwalk Bank), a member State bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank with the Savings and Loan Banking Co., New London, Ohio (New London Bank), under the charter and name of Huron Bank. As an incident to the merger the present office of New London Bank would become a branch of Norwalk Bank. Notice of the proposed merger, in form approved by the Board, has been published as required by said Act.

In accordance with the Act, the Board requested reports on competitive factors involved from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act, including the effect of the proposal on competition, the financial and managerial resources and prospects of the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Norwalk Bank, with deposits of $32 million, and two banking offices, is located in Huron County and operates in the Sandusky banking market which consists of all of Erie County and the northern portion of Huron County. Norwalk Bank is the fourth largest of 13 banks headquartered in the Sandusky banking market, holding 11.1 percent of the deposits in that market. (All banking data are as of December 31, 1970.) New London Bank, with deposits of $9 million, operates its sole office in New London. New London Bank, although located in Huron County, operates in a separate banking market consisting of New London and its immediate surroundings. The nearest offices of Norwalk Bank to New London Bank are 17 miles distant from one another. Although there are no banking offices in the territory between New London and Norwalk, there are offices of other banks which provide alternative banking services to residents of New London and which are located closer to New London Bank than is Norwalk Bank.

There is no substantial existing competition between New London Bank and Norwalk Bank. Although Norwalk Bank could branch de novo into the New London banking market, substantial potential competition would not be foreclosed by consummation of this proposal because of the small size of New London Bank and because of the rural nature and modest growth prospects of the New London area which make branching into that market by Norwalk Bank unlikely. Consummation of the proposed transaction would not result in a substantial increase in concentration levels in any relevant area. Based upon all the facts revealed in the record, the Board concludes that the merger would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of the merging banks and the resulting bank are satisfactory and consistent with approval of the application. Considerations relating to the convenience and needs of the community lend some weight toward approval since the merger would increase the lending limit of New London Bank. New London Bank would, as a result, be able to serve more adequately the credit needs of the New London community. Based upon the foregoing, it is the Board's judgment that consummation of the proposal would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[1] November 9, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-16599 Filed 11-12-71;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 4.4-1 (Region III), Disaster No. 849]

MANAGER, DISASTER BRANCH OFFICE, PHILADELPHIA

Delegation of Authority

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 4.4 (Revision 1) (36 F.R. 7291), the following authority is hereby redelegated to the position as indicated herein:

A. *Manager, (Philadelphia, Pa.) Disaster Branch Office.* 1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan.

2. To approve disaster guaranteed loans up to an SBA guarantee of $350,000 and to decline such loans in any amount.

3. To execute loan authorizations for central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

"(Name), Administrator

By ----------
Manager, Disaster Branch
Office (No. 849)"

4. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

5. To disburse unsecured disaster loans.

6. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: September 20, 1971.

RUSSELL HAMILTON, Jr.,
Regional Director,
Bala Cynwyd, Pa.

[FR Doc.71-16593 Filed 11-12-71;8:45 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

NOVEMBER 10, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

FD 26630 Sub 1, Baltimore & Eastern Railroad Co., assigned November 15, 1971, at Denton, MD, is canceled.

MC 126537 Sub 23, Kent I. Turner, Kenneth E. Turner & Ervin L. Turner a partnership doing business as Turner Expediting Service now assigned January 19, 1972, at Louisville, Ky., a hearing room to be designated later.

MC 112304 Sub 46, Ace Doran Hauling & Rigging, now assigned January 17, 1972, at Louisville, Ky., a hearing room to be designated later.

FD 26525, Chicago Milwaukee, St. Paul & Pacific Railroad Co.—Trackage Rights—Louisville & Nashville Railroad Co. Between Bedford, Ind., and New Albany, Ind., Also over Kentucky & Indiana Terminal Railroad Co., Between New Albany, Ind., and Louisville, Ky. FD 26526, Chicago Milwaukee, St. Paul & Pacific Railroad Co., Assumption of obligation and liability, now assigned January 24, 1972, at Louisville, Ky., a hearing room to be designated later.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer and Sherrill. Absent and not voting: Governor Robertson.

MC 113459 Sub 68, H. J. Jeffries Truck Line, Inc., assigned December 2, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC-C 7598, Brown Transport Corp. v. Terminal Transport Co., Inc., assigned January 17, 1972, at Atlanta, Ga., hearing room to be designated later.

MC 72442 Sub. 35, Akers Motor Lines, Inc., assigned February 14, 1972, at Atlanta, Ga., in a hearing room to be later designated.

MC 27965 Sub. 3, Davis Transportation Co., Inc., assigned February 24, 1972, at Boston, Mass.

MC 115162 Sub. 223, Poole Truck Line, Inc., assigned February 22, 1972, at Boston, Mass.

MC 119777 Sub. 208, Ligon Specialized Hauler, Inc., assigned January 10, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124211 Sub. 179, Hilt Truck Line, Inc., Now assigned November 29, 1971, at Omaha, Nebr. canceled and application dismissed.

MC-F 10831, Engel Trucking, Inc.—Control & Merger—M and M Heavy Haulers Corp., now being assigned hearing January 4, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16620 Filed 11-12-71;8:47 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 10, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42302—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 651), for interested rail carriers. Rates on imitation sour cream and various commodities, in carloads and tank carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Intrastate rates and maintenance of rates from and to points in other States not subject to the same competition.

Tariff—Supplement 124 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998. Rates are published to become effective on December 15, 1971.

AGGREGATE OF INTERMEDIATES

FSA No. 42303—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 652), for interested rail carriers. Rates on imitation sour cream and various commodities, in carloads and tank carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Maintenance of depressed rates published to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff—Supplement 124 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998. Rates are published to become effective on December 15, 1971.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16619 Filed 11-12-71;8:47 am]

[Notice 394]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 8, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 9050 (Sub-No. 31 TA), filed October 26, 1971. Applicant: SEEGER BROS., Hillside Avenue, Kenvil, N.J. 07847. Applicant's representative: James J. Farrell, 206 North Boulevard, Belmar, NJ 07719. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Classes A, B, and C explosives,* between McAdory, Ala., on the one hand, and, on the other, points in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. Supporting shipper: Hercules Inc., 910 Market Street, Wilmington, DE 19899. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 30887 (Sub-No. 169 TA), filed October 28, 1971. Applicant: SHIPLEY TRANSFER, INC., 49 Main Street, Post Office Box 55, Reisterstown, MD 21136. Applicant's representative: William B. Eckels (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Polypropylene,* in bulk, in tank vehicles, from (1) Neal, W. Va., to Sayreville, N.J.; and (2) from Sayreville, N.J., to Auburn, N.Y., for 180 days. Supporting shipper: Richard G. Ingersoll, Traffic Manager, Essex Chemical Corp., 1401 Broad Street, Clifton, NJ 07102. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 97310 (Sub-No. 8 TA), filed November 1, 1971. Applicant: BELL TRANSFER COMPANY, INC., Post Office Box 5636, Meridian, Miss. 39301. Applicant's representative: Jerry H. Blount (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between Marion and Birmingham, Ala., and including points in Adamsville, Mulga, Westfield, Woodward, Bessemer, Docena, Edgewater, Dolomite, Fairfield, Brighton, Bay View, Pleasant Grove, Hueytown, Midfield, Lipscomb, Shannon, Ishkooda, Vestavia Hills, Irondale, Alton, Tarrant City, Watson, Leeds, Brookside, Oxmoor, Smythe, Spaulding, Homewood, Overton, Center Point, Fultondale, Trussville, Pinson, Pelham Redding, Megalla, Mountain Brook, Weems, Sayreton, Argo, Gardendale, Huffman, and Wenonah, located within 15 miles of Birmingham, Ala., from Marion over Alabama Highway 5, thence over U.S. Highway 11 and Interstate Highways 20 and 59 to Birmingham, and return over the same route, serving all intermediate points; (2) between Greensboro and Tuscaloosa, Ala., from Greensboro over Alabama Highway 69 to Tuscaloosa, and return over the same route, serving all intermediate points; (3) between Greensboro and Eutaw, Ala., from Greensboro over Alabama Highway 14 to Eutaw and return over the same route, serving all intermediate points; (4) between Demopolis and Tuscaloosa, Ala., from Demopolis over U.S. Highways 43 and 11, to Tuscaloosa and return over the same route, serving all intermediate points; (5) between Eutaw and the intersection of U.S. Highways 11 and 80, near Cuba, Ala., from Eutaw over U.S. Highway 11 to the intersection of U.S. Highway 80 and return over the same route, serving all intermediate points;

(6) Between the intersection of U.S. Highway 80 and Alabama Highway 28 and Livington, Ala., from the intersection of U.S. Highway 80 and Alabama Highway 28, over Alabama Highway 28 to Livington and return over the same route, serving all intermediate points; (7) between Tuscaloosa, Ala., and the intersection of Alabama Highway 5 and U.S. Highway 11 and Interstate Highways 20 and 59; from Tuscaloosa over U.S. Highway 11 and Interstate Highways 20 and 59 to the intersection of Alabama Highway 5, and return over the same route, serving all intermediate points; (8) between Tuscaloosa, and Prattville, Ala., from Tuscaloosa over

U.S. Highway 82 to Prattville and return over the same route, serving all intermediate points; (9) between Selma and Maplesville, Ala., from Selma over Alabama Highway 22 to Maplesville and return over the same route, serving all intermediate points; and (10) between Catherine, Ala., and the intersection of Alabama Highway 28 and U.S. Highway 80; from Catherine over Alabama Highway 28 to the intersection of U.S. Highway 80 and return over the same route, serving all intermediate points, for 180 days. NOTE: This authority is restricted to traffic originating at, destined to, or moving through points in Alabama. Applicant intends to tack this authority with certificate No. MC-97310 and subs thereunder and interline at all terminal sites. Supported by: There are approximately 51 statements attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Alan C. Tarrant, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 117765 (Sub-No. 136 TA), filed October 29, 1971. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Post Office Box 75267, Oklahoma City, OK 73107. Applicant's representative: R. E. Ragen (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nonfrozen preserved foodstuffs*, in containers, from the plantsite of Lakeside Packing Co., Plainview, Minn., to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, for 180 days. Supporting shipper: Lakeside Packing Co., E. James Kraska, General Traffic Manager, Post Office Box 186, Manitowoc, WI 54220. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 128235 (Sub-No. 8 TA) (amendment), filed October 12, 1971, published FEDERAL REGISTER, October 27, 1971, amended and republished in part as amended this issue. Applicant: ALVIN JOHNSON, 137 13th Avenue NE., Minneapolis, MN 55413. Applicant's representative: Earl Hacking, 503 11th Avenue South, Minneapolis, MN 55415. NOTE: The purpose of this partial republication is to include the applicant's representative, which was inadvertently omitted in previous publication. The rest of the application remains as previously published.

No. MC 129558 (Sub-No. 4 TA), filed October 27, 1971. Applicant: ROY ROSS, doing business as ROY ROSS TRUCKING COMPANY, 297 Spruce Street, Post Office Box 405, Gallipolis, OH 45631. Applicant's representative: James R. Stiverson, Suite 2240, Leveque-Lincoln Tower, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prepared, processed and packaged meat and meat products*, in refrigerated equipment, from Bidwell (Gallia County) and Xenia (Greene County), Ohio, to Washington and Pittsburgh, Pa., for 180 days. Supporting shipper: Bob Evans Frams, 3776 South High Street, Post Office Box No. 7863, Station G, Columbus, OH 43207, Attention: Mr. Daniel E. Evans, Chairman of the Board. Send protests to: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

No. MC 136114 TA, filed October 29, 1971. Applicant: P. & H. TRANSPORT, INC., North 2128 Waterworks Street, Spokane, WA 99202. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in Washington on and east of U.S. Highway 97 and points in Idaho north of the southern boundary of Idaho and Lemhi Counties, Idaho, to points in Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, Illinois, Wisconsin, Indiana, Michigan, Ohio, Pennsylvania, New York, Kansas, and Oklahoma, for 180 days. Supported by: There are approximately 15 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 136118 TA, filed November 1, 1971. Applicant: CERNI TRANSPORTATION CORP., 18-20 Parsons Boulevard, Whitestone, NY 11357. Applicant's representative: Paul J. Keeler, Post Office Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Forms or molds, concrete construction, and materials and equipment* used in the installation and removal of the same, *plywood, steel scaffolding*, (1) Between the plantsites and warehouses of Symons Manufacturing Co., a division of Symons Corp., located in Des Plaines, Ill., Victor, N.Y., King of Prussia, Pa., Fairfield, N.J., and Baltimore, Md., and (2) between the warehouse of Symons Manufacturing Co., a division of Symons Corp., located in Fairfield, N.J., on the one hand, and, on the other, points in New York, N.Y., points in Nassau, Suffolk, Westchester, Putnam, Dutchess, Columbia, Greene, Ulster, Sullivan, Orange, and Rockland Counties, N.Y., for 180 days. Supporting shipper: Symons Manufacturing Co., Division of (S) Symons Corp., 200 East Touhy Avenue, Des Plaines, IL 60018. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 136119 TA, filed October 29, 1971. Applicant: D. H. S., INC., 112½ Main Street, Parsons, TN 38363. Applicant's representative: R. Connor Wiggins, Jr., 909 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration and freezer equipment, and parts components, attachments, and accessories therefor*, from the plantsites of Kolpak Industries, Inc., at or near Decaturville and Flat Woods, Tenn., to points in the United States (except Alaska and Hawaii) and *materials components, supplies, parts, attachments, and accessories* used in the manufacture, erection, installation, shipment, and testing of refrigeration and freezer equipment and parts, components, attachments and accessories therefor, from points in the United States (except Alaska and Hawaii) to the plantsite of Kolpak Industries, Inc., at or near Decaturville and Flat Woods, Tenn., the Service would be performed pursuant to a continuing contract between applicant and Kolpak Industries, Inc., for 180 days. Supporting shipper: Kolpak Industries, Inc., Post Office Box 7, Decaturville, Tenn. 38329. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-16618 Filed 11-12-71;8:47 am]

[Rev. S.O. 994; ICC Order 63]

LOUISVILLE AND NASHVILLE RAILROAD CO. AND BIRMINGHAM SOUTHERN RAILROAD CO.

Rerouting and Diversion of Traffic

In the opinion of R. D. Pfahler, agent, the Louisville and Nashville Railroad Co. and the Birmingham Southern Railroad Co. are unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Ala., due to restricted clearances at their normal interchange points.

It is ordered, That:

(a) *Rerouting traffic.* The Louisville and Nashville Railroad Co. and the Birmingham Southern Railroad Co. being unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Ala., due to restricted clearances at their normal interchange points, are hereby authorized to reroute or divert such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Louisville and Nashville Railroad Co. shall receive the concurrence of the Birmingham Southern Railroad Co. before the rerouting or diversion is ordered.

(c) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(d) *Effective date.* This order shall become effective at 12:01 a.m., November 15, 1971.

(e) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register

Issued at Washington, D.C., November 8, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-16621 Filed 11-12-71;8:47 am]

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PART II

DEPARTMENT OF LABOR

Wage and Hour Division

■

Exemption from Maximum Hours

Provisions for Certain Employees of Motor Carriers

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 782—EXEMPTION FROM MAXIMUM HOURS PROVISIONS FOR CERTAIN EMPLOYEES OF MOTOR CARRIERS

Part 782 of Title 29 of the Code of Federal Regulations is hereby revised to adapt it to the changes made by the "Department of Transportation Act," Public Law 89-670 (80 Stat. 931 et seq.) (49 U.S.C. 1651 et seq.), in which certain functions were transferred from the Interstate Commerce Commission to the Department of Transportation and which amended section 13(b)(1) of the Fair Labor Standards Act to conform to this transfer of functions. The format also is amended to incorporate into the text many references heretofore set forth as footnotes including additional citations.

The administrative procedure provisions of 5 U.S.C. 553 which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these are interpretive rules. I do not believe such procedures will serve a useful purpose here. Accordingly, this amendment revising Part 782 shall become effective immediately.

The revised 29 CFR Part 782 reads as follows:

Sec.
782.0 Introductory statement.
782.1 Statutory provisions considered.
782.2 Requirements for exemption in general.
782.3 Drivers.
782.4 Drivers' helpers.
782.5 Loaders.
782.6 Mechanics.
782.7 Interstate commerce requirements of exemption.
782.8 Special classes of carriers.

AUTHORITY: The provisions of this Part 782 issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

§ 782.0 Introductory statement.

(a) Since the enactment of the Fair Labor Standards Act of 1938, the views of the Administrator of the Wage and Hour Division as to the scope and applicability of the exemption provided by section 13(b)(1) of the act have been expressed in interpretations issued from time to time in various forms. This part, as of the date of its publication in the FEDERAL REGISTER, supersedes and replaces such prior interpretations. Its purpose is to make available in one place general interpretations of the Administrator which will provide "a practical guide to employers and employees as to how the office representing the public interest in enforcement of the law will seek to apply it." (Skidmore v. Swift & Co., 323 U.S. 134)

(b) The interpretations contained in this part indicate, with respect to the scope and applicability of the exemption provided by section 13(b)(1) of the Fair Labor Standards Act, the construction of the law which the Secretary of Labor and the Administrator believe to be correct in the light of the decisions of the courts, the Interstate Commerce Commission, and since October 15, 1966, its successor, the Secretary of Transportation, and which will guide them in the performance of their administrative duties under the act unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon reexamination of an interpretation that it is incorrect.

(c) Public Law 89-670 (80 Stat. 931) transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission (1) under section 204 (a)(1) and (a)(2) to the extent they relate to qualifications and maximum hours of service of employees and safety of operations and equipment, and (2) under section 204(a)(5) of the Motor Carrier Act. The interpretations contained in this part are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act (Public Law 49, 80th Cong., first sess. (61 Stat. 84), discussed in Part 790, statement on effect of Portal-to-Portal Act of 1947), so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

§ 782.1 Statutory provisions considered.

(a) Section 13(b)(1) of the Fair Labor Standards Act provides an exemption from the maximum hours and overtime requirements of section 7 of the act, but not from the minimum wage requirements of section 6. The exemption is applicable to any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act of 1935. (Part II of the Interstate Commerce Act, 49 Stat. 546, as amended; 49 U.S.C. 304, as amended by Public Law 89-670, section 8e which substituted "Secretary of Transportation" for "Interstate Commerce Commission"—Oct. 15, 1966) except that the exemption is not applicable to any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service solely by virtue of section 204(a)(3a) of Part II of the Interstate Commerce Act. (Public Law 939, 84th Cong., second sess., Aug. 3, 1956, secs. 2 and 3) The Fair Labor Standards Act confers no authority on the Secretary of Labor or the Administrator to extend or restrict the scope of this exemption. It is settled by decisions of the U.S. Supreme Court that the applicability of the exemption to an employee otherwise entitled to the benefits of the Fair Labor Standards Act is determined exclusively by the existence of the power conferred under section 204 of the Motor Carrier Act to establish qualifications and maximum hours of service with respect to him. It is not material whether such qualifications and maximum hours of service have actually been established by the Secretary of Transportation; the controlling consideration is whether the employee comes within his power to do so. The exemption is not operative in the absence of such power, but an employee with respect to whom the Secretary of Transportation has such power is excluded, automatically, from the benefits of section 7 of the Fair Labor Standards Act. (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Boutell v. Walling, 327 U.S. 463; Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Morris v. McComb, 332 U.S. 422)

(b) Section 204 of the Motor Carrier Act, 1935, provides that it shall be the duty of the Interstate Commerce Commission (now that of the Secretary of Transportation (see § 782.0(c)) to regulate common and contract carriers by motor vehicle as provided in that act, and that "to that end the Commission may establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees, and safety of operation and equipment." (Motor Carrier Act, sec. 204(a)(1), (2), 49 U.S.C. sec. 304(a)(1), (2)) Section 204 further provides for the establishing of similar regulations with respect to private carriers of property by motor vehicle, if need therefor is found. (Motor Carrier Act, sec. 204(a)(3), 49 U.S.C. sec. 304(a)(3))

(c) Other provisions of the Motor Carrier Act which have a bearing on the scope of section 204 include those which define common and contract carriers by motor vehicle, motor carriers, private carriers of property by motor vehicle (Motor Carrier Act, sec. 203(a)(14), (15), (16), (17), 49 U.S.C. sec. 303(a)(14), (15), (16), (17)) and motor vehicle (Motor Carrier Act, sec. 203(a)(13)); those which confer regulatory powers with respect to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce (Motor Carrier Act, sec. 202(a)), as defined in the Motor Carrier Act, sec. 203(a)(10), (11), and reserve to each State the exclusive exercise of the power of regulation of intrastate commerce by motor carriers on its highways (Motor Carrier Act, sec. 202(b)); and those which expressly make section 204 applicable to certain transportation in interstate or foreign commerce which is in other respects excluded from regulation under the act. (Motor Carrier Act, sec. 202(c))

§ 782.2 Requirements for exemption in general.

(a) The exemption of an employee from the hours provisions of the Fair Labor Standards Act under section 13(b)(1) depends both on the class to which his employer belongs and on the class of work involved in the employee's

job. The power of the Secretary of Transportation to establish maximum hours and qualifications of service of employees, on which exemption depends, extends to those classes of employees and those only who (1) are employed by carriers whose transportation of passengers or property by motor vehicle is subject to his jurisdiction under section 204 of the Motor Carrier Act (Boutell v. Walling, 327 U.S. 463; Walling v. Casale, 51 F. Supp. 520; and see Ex parte Nos. MC–2 and MC–3, in the Matter of Maximum Hours of Service of Motor Carrier Employees, 28 M.C.C. 125, 132), and (2) engage in activities of a character directly affecting the safety of operation of motor vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of the Motor Carrier Act. United States v. American Trucking Assns., 310 U.S. 534; Levinson v. Spector Motor Service, 330 U.S. 649; Ex parte No. MC–28, 13 M.C.C. 481; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Walling v. Comet Carriers, 151 F. (2d) 107 (C.A. 2).

(b) (1) The carriers whose transportation activities are subject to the Secretary of Transportation jurisdiction are specified in the Motor Carrier Act itself (see § 782.1). His jurisdiction over private carriers is limited by the statute to private carriers of property by motor vehicle, as defined therein, while his jurisdiction extends to common and contract carriers of both passengers and property. See also the discussion of special classes of carriers in § 782.8. And see paragraph (d) of this section. The U.S. Supreme Court has accepted the Agency determination, that activities of this character are included in the kinds of work which has been defined as the work of drivers, driver's helpers, loaders, and mechanics (see §§ 782.3 to 782.6) employed by such carriers, and that no other classes of employees employed by such carriers perform duties directly affecting such "safety of operation." Ex parte No. MC–2, 11 M.C.C. 203; Ex parte No. MC–28, 13 M.C.C. 481; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Southland Gasoline Co. v. Bayley, 319 U.S. 44. See also paragraph (d) of this section and §§ 782.3–782.8.

(2) The exemption is applicable, under decisions of the U.S. Supreme Court, to those employees and those only whose work involves engagement in activities consisting wholly or in part of a class of work which is defined (i) as that of a driver, driver's helper, loader, or mechanic, and (ii) as directly affecting the safety of operation of motor vehicles on the public highways in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 442. Although the Supreme Court recognized that the special knowledge and experience required to determine what classifications of work affects safety of operation of interstate motor carriers was applied by the Commission, it has made it clear that the determination whether or not an individual employee is within any such classification is to be determined by judicial process. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Cf. Missel v. Overnight Motor Transp., 40 F. Supp. 174 (D. Md.), reversed on other grounds 126 F. (2d) 98 (C.A. 4), affirmed 316 U.S. 572; West v. Smoky Mountains Stages, 40 F. Supp. 296 (N.D. Ga.); Magann v. Long's Baggage Transfer Co., 39 F. Supp. 742 (W.D. Va.); Walling v. Burlington Transp. Co. (D. Nebr.), 5 W.H. Cases 172, 9 Labor Cases par. 62,576; Hager v. Brinks, Inc., 6 W.H. Cases 262 (N.D. Ill.)) In determining whether an employee falls within such an exempt category, neither the name given to his position nor that given to the work that he does is controlling (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10); Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617 (W.D. Ky.); Crean v. Moran Transp. Lines (W.D. N.Y.), 9 Labor Cases, par. 62,416 (see also earlier opinion in 54 F. Supp. 765)); what is controlling is the character of the activities involved in the performance of his job.

(3) As a general rule, if the bona fide duties of the job performed by the employee are in fact such that he is (or, in the case of a member of a group of drivers, driver's helpers, loaders, or mechanics employed by a common carrier and engaged in safety-affecting occupations, that he is likely to be) called upon in the ordinary course of his work to perform, either regularly or from time to time, safety-affecting activities of the character described in subparagraph (2) of this paragraph, he comes within the exemption in all workweeks when he is employed at such job. This general rule assumes that the activities involved in the continuing duties of the job in all such workweeks will include activities which have been determined to affect directly the safety of operation of motor vehicles on the public highways in transportation in interstate commerce. Where this is the case, the rule applies regardless of the proportion of the employee's time or of his activities which is actually devoted to such safety-affecting work in the particular workweek, and the exemption will be applicable even in a workweek when the employee happens to perform no work directly affecting "safety of operation." On the other hand, where the continuing duties of the employee's job have no substantial direct effect on such safety of operation or where such safety-affecting activities are so trivial, casual, and insignificant as to be de minimis, the exemption will not apply to him in any workweek so long as there is no change in his duties. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Morris v. McComb, 332 U.S. 422; Levinson v. Spector Motor Service, 330 U.S. 649; Rogers Cartage Co. v. Reynolds, 166 F. (2d) 317 (C.A. 6); Opelika Bottling Co. v. Goldberg, 299 F. (2d) 37 (C.A. 5); Tobin v Mason & Dixon Lines, Inc., 102 F. Supp. 466 (E.D. Tenn.)) If in particular workweeks other duties are assigned to him which result, in those workweeks, in his performance of activities directly affecting the safety of operation of motor vehicles in interstate commerce on the public highways, the exemption will be applicable to him in those workweeks, but not in the workweeks when he continues to perform the duties of the non-safety-affecting job.

(4) Where the same employee of a carrier is shifted from one job to another periodically or on occasion, the application of the exemption to him in a particular workweek is tested by application of the above principles to the job or jobs in which he is employed in that workweek. Similarly, in the case of an employee of a private carrier whose job does not require him to engage regularly in exempt safety-affecting activities described in subparagraph (1) of this paragraph and whose engagement in such activities occurs sporadically or occasionally as the result of his work assignments at a particular time, the exemption will apply to him only in those workweeks when he engages in such activities. Also, because the jurisdiction of the Secretary of Transportation over private carriers is limited to carriers of property (see subparagraph (1) of this paragraph) a driver, driver's helper, loader, or mechanic employed by a private carrier is not within the exemption in any workweek when his safety-affecting activities relate only to the transportation of passengers and not to the transportation of property.

(c) The application of these principles may be illustrated as follows:

(1) In a situation considered by the U.S. Supreme Court, approximately 4 percent of the total trips made by drivers employed by a common carrier by motor vehicle involved the hauling of interstate freight. Since it appeared that the employer, as a common carrier, was obligated to take such business, and that any driver might be called upon at any time to perform such work, which was indiscriminately distributed among the drivers, the Court considered that such trips were a natural, integral, and apparently inseparable part of the common carrier service performed by the employer and driver employees. Under these circumstances, the Court concluded that such work, which directly affected the safety of operation of the vehicles in interstate commerce, brought the entire classification of drivers employed by the carrier under the power of the Interstate Commerce Commission to establish qualifications and maximum hours of service, so that all were exempt even though the interstate driving of particular employees was sporadic and occasional, and in practice some drivers would not be called upon for long periods to perform any such work. (Morris v. McComb, 332 U.S. 422)

(2) In another situation, the U.S. Court of Appeals (Seventh Circuit) held that the exemption would not apply to truckdrivers employed by a private carrier on intrastate routes who engaged in no safety-affecting activities of the character described above even though other drivers of the carrier on interstate

routes were subject to the jurisdiction of the Motor Carrier Act. The court reaffirmed the principle that the exemption depends not only upon the class to which the employer belongs but also the activities of the individual employee. (Goldberg v. Faber Industries, 291 F. (2d) 232)

(d) The limitations, mentioned in paragraph (a) of this section, on the regulatory power of the Secretary of Transportation (as successor to the Interstate Commerce Commission) under section 204 of the Motor Carrier Act are also limitations on the scope of the exemption. Thus, the exemption does not apply to employees of carriers who are not carriers subject to his jurisdiction, or to employees of noncarriers such as commercial garages, firms engaged in the business of maintaining and repairing motor vehicles owned and operated by carriers, firms engaged in the leasing and renting of motor vehicles to carriers and in keeping such vehicles in condition for service pursuant to the lease or rental agreements. (Boutell v. Walling, 327 U.S. 463; Walling v. Casale, 51 F. Supp. 520) Similarly, the exemption does not apply to an employee whose job does not involve engagement in any activities which have been defined as those of drivers, drivers' helpers, loaders, or mechanics, and as directly affecting the "safety of operation" of motor vehicles. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; United States v. American Trucking Assn., 310 U.S. 534; Gordon's Transports v. Walling, 162 F. (2d) 203 (C.A. 6); Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10)) Except in so far as the Commission has found that the activities of drivers, drivers' helpers, loaders, and mechanics, as defined by it, directly affect such "safety of operation," it has disclaimed its power to establish qualifications or maximum hours of service under section 204 of the Motor Carrier Act. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695) "Safety of operation" as used in section 204 of the Motor Carrier Act means "the safety of operation of motor vehicles in the transportation of passengers or property in interstate or foreign commerce, and that alone." (Ex parte Nos. MC–2 and MC–3 (Conclusions of Law No. 1), 28 M.C.C. 125, 139) Thus, the activities of drivers, drivers' helpers, loaders, or mechanics in connection with transportation which is not in interstate or foreign commerce within the meaning of the Motor Carrier Act provide no basis for exemption under section 13(b)(1) of the Fair Labor Standards Act. (Walling v. Comet Carriers, 151 F. (2d) 107 (C.C.A. 2); Hansen v. Salinas Valley Ice Co. (Cal. App.) 144 P. (2d) 896; Reynolds v. Rogers Cartage Co., 71 F. Supp. 870 (W.D. Ky.), reversed on other grounds, 166 F (d) 317 (C.A. 6); Earle v. Brinks, Inc., 54 F. Supp. 676 (S.D. N.Y.); Walling v. Villaume Box & Lumber Co., 58 F. Supp. 150 D. Minn.); Hager v. Brinks, Inc., 11 Labor Cases, par. 63,296 (N.D. Ill.), 6 W.H. Cases 262; Walling v. DeSoto Creamery & Produce Co., 51 F. Supp. 938 (D. Minn.); Dallum v. Farmers Cooperative Trucking Assn., 46 F. Supp. 785 (D. Minn.); McLendon v. Bewley Mills (N.D. Tex.); 3 Labor Cases, par. 60,247, 1 W.H. Cases 934; Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814; cf. Morris v. McComb, 332 U.S. 422. See also § 782.1 and §§ 782.7–782.8.)

(e) The jurisdiction of the Secretary of Transportation under section 204 of the Motor Carrier Act relates to safety of operation of motor vehicles only, and "to the safety of operation of such vehicles on the highways of the country, and that alone." (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 192. See also United States v. American Trucking Assns., 319 U.S. 534, 548.) Accordingly, the exemption does not extend to employees merely because they engage in activities affecting the safety of operation of motor vehicles operated on private premises. Nor does it extend to employees engaged solely in such activities as operating freight and passenger elevators in the carrier's terminals or moving freight or baggage therein or the docks or streets by hand trucks, which activities have no connection with the actual operation of motor vehicles. (Gordon's Transport v. Walling, 162 F. (2d) 203 (C.A. 6), certorari denied 322 U.S. 774; Walling v. Comet Carriers, 57 F. Supp. 1018, affirmed, 151 F. (2d) 107 (C.A. 2), certiorari dismissed, 382 U.S. 819; Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 128. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Serv., 330 U.S. 949.)

(f) Certain classes of employees who are not within the definitions of drivers, drivers' helpers, loaders, and mechanics are mentioned in §§ 782.3–782.6, inclusive. Others who do not come within these definitions include the following, whose duties are considered to affect safety of operation, if at all, only indirectly; stenographers (including those who write letters relating to safety or prepare accident reports); clerks of all classes (including rate clerks, billing clerks, clerks engaged in preparing schedules, and filing clerks in charge of filing accident reports, hours-of-service records, inspection reports, and similar documents); foremen, warehousemen, superintendents, salesmen, and employees acting in an executive capacity. (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Ex parte No. MC–28, 13 M.C.C. 481. But see §§ 782.5(b) and 782.6(b) as to certain foremen and superintendents.) Such employees are not within the section 13(b)(1) exemption. (Overnight Motor Transp. Co. v. Missel, 316 U.S. 572 (rate clerk who performed incidental duties as cashier and dispatcher); Levinson v. Spector Motor Service, 330 U.S. 649; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10) (checker of freight and bill collector); Potashnik, Local Truck System v. Archer (Ark. Sup. Ct.), 179 S.W. (2d) 696 (night manager who did clerical work on waybills, filed day's accumulation of bills and records, billed out local accumulation of shipments, checked mileage on trucks and made written reports, acted as night dispatcher, answered telephone calls, etc.).)

§ 782.3 Drivers.

(a) A "driver," as defined for Motor Carrier Act jurisdiction (49 CFR Parts 390–395; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–4, 1 M.C.C. 1), is an individual who drives a motor vehicle in transportation which is, within the meaning of the Motor Carrier Act, in interstate or foreign commerce. (As to what is considered transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act, see § 782.7.) This definition does not require that the individual be engaged in such work at all times; it is recognized that even full-duty drivers devote some of their working time to activities other than such driving. "Drivers," as thus officially defined, include, for example, such partial-duty drivers as the following, who drive in interstate or foreign commerce as part of a job in which they are required also to engage in other types of driving or nondriving work: Individuals whose driving duties are concerned with transportation some of which is in intrastate commerce and some of which is in interstate or foreign commerce within the meaning of the Motor Carrier Act; individuals who ride on motor vehicles engaged in transportation in interstate or foreign commerce and act as assistant or relief drivers of the vehicles in addition to helping with loading, unloading, and similar work; drivers of chartered buses or of farm trucks who have many duties unrelated to driving or safety of operation of their vehicles in interstate transportation on the highways; and so-called "driver-salesmen" who devote much of their time to selling goods rather than to activities affecting such safety of operation. (Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 422; Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Gavril v. Kraft Cheese Co., 42 F. Supp. 702 (N.D. Ill.); Walling v. Craig, 53 F. Supp. 479 (D. Minn.); Vannoy v. Swift & Co. (Mo. S. Ct.), 201 S.W. (2d) 350; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Ex parte No. MC–4, 1 M.C.C. 1. Cf. Colbeck v. Dairyland Creamery Co. (S.D. Supp. Ct.), 17 N.W. (2d) 262, in which the court held that the exemption did not apply to a refrigeration mechanic by reason solely of the fact that he crossed State lines in a truck in which he transported himself to and from the various places at which he serviced equipment belonging to his employer.)

(b) The work of an employee who is a full-duty or partial-duty "driver," as the term "driver" is above defined, directly affects "safety of operation" within the meaning of section 204 of the Motor Carrier Act whenever he drives a motor vehicle in interstate or foreign commerce within the meaning of that act. (Levinson v. Spector Motor Service, 330 U.S. 649, citing Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Ex parte No MC–28, 13 M.C.C. 481, 482, 488; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 139 (Conclusion of Law No. 2). See also Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–4, 1 M.C.C. 1.) The

Secretary has power to establish, and has established, qualifications and maximum hours of service for such drivers employed by common and contract carriers of passengers or property and by private carriers of property pursuant to section 204 of the Motor Carrier Act. (See Ex parte No. MC–4, 1 M.C.C. 1; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–28, 13 M.C.C. 481; Levinson v. Spector Motor Service, 330 U.S. 649; Southland Gasoline Co. v. Bayley, 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Safety Regulations (Carriers by Motor Vehicle), 49 CFR Parts 390, 391, 395.) In accordance with principles previously stated (see § 782.2), such drivers to whom this regulatory power extends are, accordingly, employees exempted from the overtime requirements of the Fair Labor Standards Act by section 13(b)(1). (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 422; Rogers Cartage Co. v. Reynolds, 166 F. (2d) 317 (C.A. 6). This does not mean that an employee of a carrier who drives a motor vehicle is exempted as a "driver" by virtue of that fact alone. He is not exempt if his job never involves transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act (see §§ 782.2 (d) and (e), 782.7, and 782.8), or if he is employed by a private carrier and the only such transportation called for by his job is not transportation of property. (See § 782.2. See also Ex parte No. MC–28, 13 M.C.C. 481. Cf. Colbeck v. Dairyland Creamery Co. (S. Ct. S.D.), 17 N.W. (2d) 262 (driver of truck used only to transport himself to jobsites, as an incident of his work in servicing his employer's refrigeration equipment, held nonexempt).) It has been held that so-called "hostlers" who "spot" trucks and trailers at a terminal dock for loading and unloading are not exempt as drivers merely because as an incident of such duties they drive the trucks and tractors in and about the premises of the trucking terminal. (Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726 6 Wage Hour Rept. 676, cf. Walling v. Silver Fleet Motor Express, 67 F. Supp. 846)

§ 782.4 Driver's helpers.

(a) A driver's "helper," as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135, 136, 138, 139), is an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. (The term does not include employees who ride on the vehicle and act as assistants or relief drivers. Ex parte Nos. MC–2 and MC–3, supra. See § 782.3.) This definition has classified all such employees, including armed guards on armored trucks and conductorettes on buses, as "helpers" with respect to whom he has power to establish qualifications and maximum hours of service because of their engagement in some or all of the following activities which, in his opinion, directly affect the safety of operation of such motor vehicles in interstate or foreign commerce (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135–136): Assist in loading the vehicles (they may also assist in unloading (Ex parte Nos. MC–2 and MC–3, supra), an activity which has been held not to affect "safety of operation," see § 782.5(c); as to what it meant by "loading" which directly affects "safety of operation," see § 782.5(a)); dismount when the vehicle approaches a railroad crossing and flag the driver across the tracks, and perform a similar duty when the vehicle is being turned around on a busy highway or when it is entering or emerging from a driveway; in case of a breakdown, (1) place the flags, flares, and fuses as required by the safety regulations, (2) go for assistance while the driver protects the vehicle on the highway, or vice versa, or (3) assist the driver in changing tires or making minor repairs; and assist in putting on or removing chains.

(b) An employee may be a "helper" under the official definition even though such safety-affecting activities constitute but a minor part of his job. Thus, although the primary duty of armed guards on armored trucks is to protect the valuables in the case of attempted robberies, they are classified as "helpers" where they ride on such trucks being operated in interstate or foreign commerce, because, in the case of an accident or other emergency and in other respects, they act in a capacity somewhat similar to that of the helpers described in the text. Similarly, conductorettes on buses whose primary duties are to see to the comfort of the passengers are classified as "helpers" whose such buses are being operated in interstate or foreign commerce, because in instances when accidents occur, they help the driver in obtaining aid and protect the vehicle from oncoming traffic.

(c) In accordance with principles previously stated (see § 782.2), the section 13(b)(1) exemption applies to employees who are, under the Secretary of Transportation's definitions, engaged in such activities as full- or partial-duty "helpers" on motor vehicles being operated in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. (Ispass v. Pyramid Motor Freight Corp., 152 F. (2d) 619 (C.A. 2); Walling v. McGinley Co. (E.D. Tenn.), 12 Labor Cases, par. 63,731, 6 W.H. Cases 916. See also Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Dallum v. Farmers Coop. Trucking Assn., 46 F. Supp. 785 (D. Minn.).) The exemption has been held inapplicable to so-called helpers who ride on motor vehicles but do not engage in any of the activities of "helpers" which have been found to affect directly the safety of operation of such vehicles in interstate or foreign commerce. (Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases par. 62,934, 6 W.H. Cases 831, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied, 332 U.S. 774 (helpers on city "pickup and delivery trucks" where it was not shown that the loading in any manner affected safety of operation and the helpers' activities were "in no manner similar" to those of a driver's helper in over-the-road operation).) It should be noted also that an employee, to be exempted as a driver's "helper" under the Secretary's definitions, must be "required" as part of his job to ride on a motor vehicle when it is being operated in interstate or foreign commerce; an employee of a motor carrier is not exempted as a "helper" when he rides on such a vehicle, not as a matter of fixed duty, but merely as a convenient means of getting himself to, from, or between places where he performs his assigned work. (See Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695, modifying, on other grounds, 152 F. (2d) 619 (C.A. 2).)

§ 782.5 Loaders.

(a) A "loader," as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134, 139), is an employee of a carrier subject to section 204 of the Motor Carrier Act (other than a driver or driver's helper as defined in §§ 782.3 and 782.4) whose duties include, among other things, the proper loading of his employer's motor vehicles so that they may be safely operated on the highways of the country. A "loader" may be called by another name, such as "dockman," "stacker," or "helper," and his duties will usually also include unloading and the transfer of freight between the vehicles and the warehouse, but he engages, as a "loader," in work directly affecting "safety of operation" so long as he has responsibility, when such motor vehicles are being loaded, for exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in interstate or foreign commerce will not be jeopardized. (Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Gordon's Transport (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134)

(b) The section 13(b)(1) exemption applies, in accordance with principles previously stated (see § 782.2), to an employee whose job involves activities consisting wholly or in part of doing, or immediately directing, a class of work defined (1) as that of a loader, and (2) as directly affecting the safety of operation of motor vehicles in interstate or foreign commerce within the meaning of the Motor Carrier Act, since such an employee is an employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service. (Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Silver Fleet

Motor Express, 67 F. Supp. 846; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Gordon's Transports (W.D. Tenn.); 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Tinerella v. Des Moines Transp. Co., 41 F. Supp. 798.) Where a checker, foreman, or other supervisor plans and immediately directs the proper loading of a motor vehicle as described above, he may come within the exemption as a partial-duty loader. (Levinson v. Spector Motor Service, 330 U.S. 649; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934; affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 885; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Crean v. Moran Transportation Lines, 57 F. Supp. 212 (W.D. N.Y.). See also 9 Labor Cases, par. 62,416; Walling v. Commercial Motor Freight (S.D. Ind.), 11 Labor Cases, par. 63,451; Hogla v. Porter (E.D. Okla.), 11 Labor Cases, par. 63,389, 6 W.H. Cases 608.)

(c) An employee is not exempt as a loader where his activities in connection with the loading of motor vehicles are confined to classes of work other than the kind of loading described above, which directly affects "safety of operation." (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649) The mere handling of freight at a terminal, before or after loading, or even the placing of certain articles of freight on a motor carrier truck may form so trivial, casual, or occasional a part of an employee's activities, or his activities may relate only to such articles or to such limited handling of them, that his activities will not come within the kind of "loading" which directly affects "safety of operation." Thus, the following activities have been held to provide no basis for exemption: Unloading; placing freight in convenient places in the terminal, checking bills of lading; wheeling or calling freight being loaded or unloaded; loading vehicles for trips which will not involve transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act; and activities relating to the preservation of the freight as distinguished from the safety of operation of the motor vehicles carrying such freight on the highways. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10); McKeown v. Southern Calif. Freight Forwarders, 49 F. Supp. 543; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Crean v. Moran Transp. Lines, 50 F. Supp. 107, 54 F. Supp. 765 (cf. 57 F. Supp. 212); Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814. See also Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617.) As is apparent from opinion in Ex Parte Nos. MC–2 and MC–3, 28 M.C.C. 125, red caps of bus companies engaged in loading baggage on buses are not loaders engaged in work directly affecting safety of operation of the vehicles. In the same opinion, it is expressly recognized that there is a class of freight which, because it is light in weight, probably could not be loaded in a manner which would adversely affect "safety of operation." Support for this conclusion is found in Wirtz v. C & P Shoe Corp., 335 F. (2d) 21 (C.A. 5), wherein the court held the loading of boxes of shoes, patterned on the last in, first out principle clearly was not of a safety affecting character "in view of the light weight of the cargo involved." In the case of coal trucks which are loaded from stockpiles by the use of an electric bridge crane and a mechanical conveyor, it has been held that employees operating such a crane or conveyor in the loading process are not exempt as "loaders" under section 13(b)(1). (Barrick v. South Chicago Coal & Dock Co. (N.D. Ill.), 8 Labor Cases, par. 62,242, affirmed 149 F. (2d) 960 (C.A. 7)). It seems apparent from the foregoing discussion that an employee who has no responsibility for the proper loading of a motor vehicle is not within the exemption as a "loader" merely because he furnishes physical assistance when necessary in loading heavy pieces of freight, or because he deposits pieces of freight in the vehicle for someone else to distribute and secure in place, or even because he does the physical work of arranging pieces of freight in the vehicle where another employee tells him exactly what to do in each instance and he is given no share in the exercise of discretion as to the manner in which the loading is done. (See Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Yellow Transit Freight Lines Inc. v. Balven, 320 F. (2d) 495 (C.A. 8); Foremost Dairies v. Ivey, 204 F. (2d) 186 (C.A. 5); Ispass v. Pyramid Motor Freight Corp., 78 F. Supp. 475 (S.D. N.Y.); Mitchell v. Meco Steel Supply Co., 183 F. Supp. 779 (S.D. Tex.); Garton v. Sanders Transfer & Storage Co., 124 F. Supp. 84 (M.D. Tenn.); McKeown v. Southern Calif. Freight Forwarders, 49 F. Supp. 543; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Crean v. Moran Transportation Lines, 50 F. Supp. 107 (see also further opinion in 54 F. Supp. 765, and cf. the court's holding in 57 F. Supp. 212 with Walling v. Gordon's Transports, cited above). See also Levinson v. Spector Motor Service, 330 U.S. 649.) Such activities would not seem to constitute the kind of "loading" which directly affects the safety of operation of the loaded vehicle on the public highways, under the official definitions. (See Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134.)

§ 782.6 Mechanics.

(a) A "mechanic," for purposes of safety regulations under the Motor Carrier Act is an employee who is employed by a carrier subject to the Secretary's jurisdiction under section 204 of the Motor Carrier Act and whose duty it is to keep motor vehicles operated in interstate or foreign commerce by his employer in a good and safe working condition. (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 132, 133. Ex parte No. MC–40 (Sub. No. 2), 88 M.C.C. 710 (repair of refrigeration equipment). See also Morris v. McComb, 332 U.S. 422.) It has been determined that the safety of operation of such motor vehicles on the highways is directly affected by those activities of mechanics, such as keeping the lights and brakes in a good and safe working condition, which prevent the vehicles from becoming potential hazards to highway safety and thus aid in the prevention of accidents. The courts have held that mechanics perform work of this character where they actually do inspection, adjustment, repair, or maintenance work on the motor vehicles themselves (including trucks, tractors and trailers, and buses) and are, when so engaged, directly responsible for creating or maintaining physical conditions essential to the safety of the vehicles on the highways through the correction or prevention of defects which have a direct causal connection with the safe operation of the unit as a whole. (Walling v. Silver Bros., 136 F. (2d) 168 (C.A. 1); McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Tinerella v. Des Moines Transp. Co., 41 F. Supp. 798; Robbins v. Zabarsky, 44 F. Supp. 867; West v. Smoky Mt. Stages, 40 F. Supp. 296; Walling v. Cumberland & Liberty Mills Co. (S.D. Fla.), 6 Labor Cases, par. 61,184; Esibill v. Marshall (D. N.J.), 6 Labor Cases, par. 61,256; Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726; Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956; Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960.) The following activities performed by mechanics on motor vehicles operated in interstate or foreign commerce are illustrative of the specific kinds of activities which the courts, in applying the foregoing principles, have regarded as directly affecting "safety of operation": The inspection, repair, adjustment, and maintenance for safe operation of steering apparatus, lights, brakes, horns, windshield wipers, wheels and axles, bushings, transmissions, differentials, motors, starters and ignition, carburetors, fifth wheels, springs and spring hangers, frames, and gasoline tanks. (McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Wolfe v. Union Transfer & Storage Co., 48 F. Supp. 866; Mason & Dixon Lines v. Ligon (Tenn. Ct. App.), 7 Labor Cases, par. 61,962; Walling v. Palmer, 67 F. Supp. 12; Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960.) Inspecting and checking air pressure in tires, changing tires, and repairing and rebuilding tires for immediate replacement on the vehicle from which they were removed have also been held to affect safety of operation directly. (Walling v. Silver Fleet Motor

Express, 67 F. Supp. 846; Walling v. Palmer, 67 F. Supp. 12. See also McDuffie v. Hayes Freight Lines, 71 F. Supp. 755.) The same is true of hooking up tractors and trailers, including light and brake connections, and the inspection of such hookups. (Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Walling v. Palmer, 67 F. Supp. 12. See also Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 744.)

(b) The section 13(b)(1) exemption applies, in accordance with principles previously stated (see § 782.2), to an employee whose job involves activities consisting wholly or in part of doing, or immediately directing, a class of work which, under the definitions referred to above, is that of a "mechanic" and directly affects the safety of operation of motor vehicles on the public highways in interstate or foreign commerce within the meaning of the Motor Carrier Act. The power under the Motor Carrier Act to establish qualifications and maximum hours of service for such an employee has been sustained by the courts. (Morris v. McComb, 332 U.S. 422. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; Walling v. Silver Bros., 136 F. (2d) 168 (C.C.A. 1).) A supervisory employee who plans and immediately directs and checks the proper performance of this class of work may come within the exemption as a partial-duty mechanic. (Robbins v. Zabarsky, 44 F. Supp. 867; Mason & Dixon Lines v. Ligon (Tenn. Ct. App.), 7 Labor Cases par. 61,962; cf. Morris v. McComb, 332 U.S. 422 and Levinson v. Spector Motor Service, 330 U.S. 649)

(c) (1) An employee of a carrier by motor vehicle is not exempted as a "mechanic" from the overtime provisions of the Fair Labor Standards Act under section 13(b)(1) merely because he works in the carrier's garage, or because he is called a "mechanic," or because he is a mechanic by trade and does mechanical work. (Wirtz v. Tyler Pipe & Foundry Co., 369 F. 2d 927 (C.A. 5).) The exemption applies only if he is doing a class of work defined as that of a "mechanic," including activities which directly affect the safety of operation of motor vehicles in transporation on the public highways in interstate or foreign commerce. (Morris v. McComb, 332 U.S. 422; Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576. Compare Ex parte No. MC-40 (Sub. No. 2), 88 M.C.C. 710 with Colbeck v. Dairyland Creamery Co. (S.D. Sup. Ct.), 17 N.W. (2d) 262. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695.) Activities which do not directly affect such safety of operation include those performed by employees whose jobs are confined to such work as that of dispatchers, carpenters, tarpaulin tailors, vehicle painters, or servicemen who do nothing but oil, gas, grease, or wash the motor vehicles. (Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 132, 133, 135) To these may be added activities such as filling radiators, checking batteries, and the usual work of such employees as stockroom personnel, watchmen, porters, and garage employees performing menial nondiscretionary tasks or disassembling work. Employees whose work is confined to such "nonsafety" activities are not within the exemption, even though the proper performance of their work may have an indirect effect on the safety of operation of the motor vehicles on the highways. (Morris v. McComb, 332 U.S. 422; Campbell v. Riss & Co. (W.D. Mo.), 5 Labor Cases, par. 61,092 (dispatcher); McDuffie v. Hayes Freight Lines, 71 F. Supp. 755 (work of janitor and caretaker, carpentry work, body building, removing paint, preparing for repainting, and painting); Walling v. Silver Fleet Motor Express, 67 F. Supp. 846 (body building, construction work, painting and lettering); Hutchinson v. Barry, 50 F. Supp. 292 (washing vehicles); Walling v. Palmer, 67 F. Supp. 12 (putting water in radiators and batteries, oil and gas in vehicles, and washing vehicles); Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861 (body builders, tarpaulin worker, stockroom boy, night watchman, porter); Bumpus v. Continental Baking Co. (W.D. Tenn.), 1 Wage Hour Cases 920 (painter), reversed on other grounds 124 F. (2d) 549; Green v. Riss & Co., 45 F. Supp. 648 (night watchman and gas pump attendant); Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576 (body builders); Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726 (greasing and washing); Walling v. East Texas Freight Lines (N.D. Tex.), 8 Labor Cases, par. 62,083 (menial tasks); Collier v. Acme Freight Lines, unreported (S.D. Fla., Oct. 1943) (same); Potashnik Local Truck System v. Archer (Ark. Sup. Ct.), 179 S.W. (2d) 696 (checking trucks in and out and acting as night dispatcher, among other duties); Overnight Motor Corp. v. Missel, 316 U.S. 572 (rate clerk with part-time duties as dispatcher).) The same has been held true of employees whose activities are confined to construction work, manufacture or rebuilding of truck, bus, or trailer bodies, and other duties which are concerned with the safe carriage of the contents of the vehicle rather than directly with the safety of operation on the public highways of the motor vehicle itself. (Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576. Compare Colbeck v. Dairyland Creamery Co. (S.D. Sup. Ct.), 17 N.W. (2d) 262 with Ex parte No. MC-40 (Sub. No. 2), 88 M.C.C. 710.)

(2) The distinction between direct and indirect effects on safety of operation is exemplified by the comments in rejecting the contention in Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 135, that the activities of dispatchers directly affect safety of operation. It was stated: "It is contended that if a dispatcher by an error in judgment assigns a vehicle of insufficient size and weight-carrying capacity to transport the load, or calls a driver to duty who is sick, fatigued, or otherwise not in condition to operate the vehicle, or requires or permits the vehicle to depart when the roads are icy and the country to be traversed is hilly, an accident may result. While this may be true, it is clear that such errors in judgment are not the proximate causes of such accidents, and that the dispatchers engage in no activities which directly affect the safety of operation of motor vehicles in interstate or foreign commerce."

(3) Similarly, the exemption has been held inapplicable to mechanics repairing and rebuilding parts, batteries, and tires removed from vehicles where a direct causal connection between their work and the safe operation of motor vehicles on the highways is lacking because they do no actual work on the vehicles themselves and entirely different employees have the exclusive responsibility for determining whether the products of their work are suitable for use, and for the correct installation of such parts, on the vehicles. (Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855) Mechanical work on motor vehicles of a carrier which is performed in order to make the vehicles conform to technical legal requirements rather than to prevent accidents on the highways has not been regarded by the courts as work directly affecting "safety of operation." (Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960; Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Yellow Transit Freight Lines Inc. v. Balsen 320 F. (2d) 495 (C.A. 8)) And it is clear that no mechanical work on motor vehicles can be considered to affect safety of operation of such vehicles in interstate or foreign commerce if the vehicles are never in fact used in transportation in such commerce on the public highways. (Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956)

§ 782.7 Interstate commerce requirements of exemption.

(a) As explained in preceding sections of this part, section 13(b)(1) of the Fair Labor Standards Act does not exempt an employee of a carrier from the act's overtime provisions unless it appears, among other things, that his activities as a driver, driver's helper, loader, or mechanic directly affect the safety of operation of motor vehicles in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. What constitutes such transportation in interstate or foreign commerce, sufficient to bring such an employee

within the regulatory power of the Secretary of Transportation under section 204 of that act, is determined by definitions contained in the Motor Carrier Act itself. These definitions are, however, not identical with the definitions in the Fair Labor Standards Act which determine whether an employee is within the general coverage of the wage and hours provisions as an employee "engaged in (interstate or foreign) commerce." For this reason, the interstate commerce requirements of the section 13(b)(1) exemption are not necessarily met by establishing that an employee is "engaged in commerce" within the meaning of the Fair Labor Standards Act when performing activities as a driver, driver's helper, loader, or mechanic, where these activities are sufficient in other respects to bring him within the exemption. (Hager v. Brinks, Inc. (N.D. Ill.), 11 Labor Cases, par. 63,296, 6 W.H. Cases 262; Earle v. Brinks, Inc., 54 F. Supp. 676 (S.D. N.Y.); Thompson v. Daugherty, 40 F. Supp. 279 (D. Md.). See also, Walling v. Villaume Box & Lbr. Co., 58 F. Supp. 150 (D. Minn.). And see in this connection paragraph (b) of this section and § 782.8.) To illustrate, employees of construction contractors are, within the meaning of the Fair Labor Standards Act, engaged in commerce where they operate or repair motor vehicles used in the maintenance, repair, or reconstruction of instrumentalities of interstate commerce (for example, highways over which goods and persons regularly move in interstate commerce). (Walling v. Craig, 53 F. Supp. 479 (D. Minn.). See also Engbretson v. E. J. Albrecht Co., 150 F. (2d) 602 (C.A. 7); Overstreet v. North Shore Corp., 318 U.S. 125; Pedersen v. J. F. Fitzgerald Constr. Co., 318 U.S. 740, 742.) Employees so engaged are not, however, brought within the exemption merely by reason of that fact. In order for the exemption to apply, their activities, so far as interstate commerce is concerned, must relate directly to the transportation of materials moving in interstate or foreign commerce within the meaning of the Motor Carrier Act. Asphalt distributor-operators, although not exempt by reason of their work in applying the asphalt to the highways, are within the exemption where they transport to the road site asphalt moving in interstate commerce. See Richardson v. James Gibbons Co., 132 F. (2d 627 (C.A. 4), affirmed 319 U.S. 44 (and see reference to this case in footnote 18 of Levinson v. Spector Motor Service, 330 U.S. 649); Walling v. Craig, 53 F. Supp. 479 (D. Minn.).

(b) (1) Highway transportation by motor vehicle from one State to another, in the course of which the vehicles cross the State line, clearly constitutes interstate commerce under both acts. Employees of a carrier so engaged, whose duties directly affect the safety of operation of such vehicles, are within the exemption in accordance with principles previously stated. (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Plunkett v. Abraham Bros., 129 F. (2d) 419 (C.A. 6); Vannoy v. Swift & Co. (Mo. Sup. Ct.), 201 S.W. (2d) 350; Nelson v. Allison & Co. (E.D. Tenn.), 13 Labor Cases, par. 64,021; Reynolds v. Rogers Cartage Co. (W.D. Ky.), 13 Labor Cases, par. 63,978, reversed on other grounds 166 F. (2d) 317 (C.A. 6); Walling v. McGinley Co. (E.D. Tenn.), 12 Labor Cases, par. 63,731; Walling v. A. H. Phillips, Inc., 50 F. Supp. 749, affirmed (C.A. 1) 144 F. (2d) 102, 324 U.S. 490. See §§ 782.2–782.8.) The result is no different where the vehicles do not actually cross State lines but operate solely within a single State, if what is being transported is actually moving in interstate commerce within the meaning of both acts; the fact that other carriers transport it out of or into the State is not material. (Morris v. McComb, 68 S. Ct. 131; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Silver Bros. Co. 136 F. (2d) 168 (C.A. 1); Walling v. Mutual Wholesale Food & Supply Co., 141 F. (2d) 331 (C.A. 8); Dallum v. Farmers Cooperative Trucking Assn., 46 F. Supp. 785 (D. Minn.); Gavril v. Kraft Cheese Co., 42 F. Supp. 702 (N.D. Ill.); Keegan v. Rupport (S.D. N.Y.), 7 Labor Cases, par. 61,726, 3 W.H. Cases 412; Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956, 5 W.H. Cases 926) Transportation within a single State is in interstate commerce within the meaning of the Fair Labor Standards Act where it forms a part of a "practical continuity of movement" across State lines from the point of origin to the point of destination. (Walling v. Jacksonville Paper Co., 317 U.S. 564; Walling v. Mutual Wholesale Food & Supply Co., 141 F. (2d) 331 (C.A. 8); Walling v. American Stores Co., 133 F. (2d) 840 (C.A. 3); Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956, 5 W.H. Cases 926) Since the interstate commerce regulated under the two acts is not identical (see paragraph (a) of this section), such transportation may or may not be considered also a movement in interstate commerce within the meaning of the Motor Carrier Act. Decisions of the Interstate Commerce Commission prior to 1966 seemingly have limited the scope of the Motor Carrier Act more narrowly than the courts have construed the Fair Labor Standards Act. (See § 782.8.) It is deemed necessary, however, as an enforcement policy only and without prejudice to any rights of employees under section 16(b) of the Act, to assume that such a movement in interstate commerce under the Fair Labor Standards Act is also a movement in interstate commerce under the Motor Carrier Act, except in those situations where the Commission has held or the Secretary of Transportation or the courts hold otherwise. (See § 782.8(a); and compare Beggs v. Kroger Co., 167 F. (2d) 700, with the Interstate Commerce Commission's holding in Ex parte No. MC–48, 71 M.C.C. 17, discussed in paragraph (b)(2) of this section.) Under this enforcement policy it will ordinarily be assumed by the Administrator that the interstate commerce requirements of the section 13(b)(1) exemption are satisfied where it appears that a motor carrier employee is engaged as a driver, driver's helper, loader, or mechanic in transportation by motor vehicle which, although confined to a single State, is a part of an interstate movement of the goods or persons being thus transported so as to constitute interstate commerce within the meaning of the Fair Labor Standards Act. This policy does not extend to drivers, driver's helpers, loaders, or mechanics whose transportation activities are "in commerce" or "in the production of goods for commerce" within the meaning of the act but are not a part of an interstate movement of the goods or persons carried (see, e.g., Wirtz v. Crystal Lake Crushed Stone Co., 327 F. 2d 455 (C.A. 7)). Where, however, it has been authoritatively held that transportation of a particular character within a single State is not in interstate commerce as defined in the Motor Carrier Act (as has been done with respect to certain transportation of petroleum products from a terminal within a State to other points within the same State—see subparagraph (2) of this paragraph), there is no basis for an exemption under section 13(b)(1), even though the facts may establish a "practical continuity of movement" from out-of-State sources through such in-State trip so as to make the trip one in interstate commerce under the Fair Labor Standards Act. Of course, engagement in local transportation which is entirely in intrastate commerce provides no basis for exempting a motor carrier employee. (Kline v. Wirtz, 373 F. 2d 281 (C.A. 5). See also paragraph (b) of this section.)

(2) The Interstate Commerce Commission held that transportation confined to points in a single State from a storage terminal of commodities which have had a prior movement by rail, pipeline, motor, or water from an origin in a different State is not in interstate or foreign commerce within the meaning of part II of the Interstate Commerce Act if the shipper has no fixed and persisting transportation intent beyond the terminal storage point at the time of shipment. See Ex parte No. MC–48 (71 M.C.C. 17, 29). The Commission specifically ruled that there is no fixed and persisting intent where (i) at the time of shipment there is no specific order being filled for a specific quantity of a given product to be moved through to a specific destination beyond the terminal storage, and (ii) the terminal storage is a distribution point or local marketing facility from which specific amounts of the product are sold or allocated, and (iii) transportation in the furtherance of this distribution within the single State is specifically arranged only after sale or allocation from storage. In Baird v. Wagoner Transportation Co., 425 F. (2d) 407 (C.A. 6), the court found each of these factors to be present and held the intrastate transportation activities were not "in interstate commerce" within the meaning of the Motor Carrier Act and denied the section 13(b)(1) exemption. While Ex parte No. MC–48 deals with petroleum and petroleum products, the decision indicates that the same reasoning applies to general commodities moving interstate into a warehouse for distribution (71 M.C.C. at 27). Accordingly, employees engaged in

such transportation are not subject to the Motor Carrier Act and therefore not within the section 13(b)(1) exemption. They may, however, be engaged in commerce within the meaning of the Fair Labor Standards Act. (See in this connection, Mid-Continent Petroleum Corp. v. Keen, 157 F. 2d 310 (C.A. 8); DeLoach v. Crowley's Inc., 128 F. 2d 378 (C.A. 5); Walling v. Jacksonville Paper Co., 69 F. Supp. 599, affirmed 167 F. 2d 448, reversed on another point in 336 U.S. 187; and Standard Oil Co. v. Trade Commission, 340 U.S. 231, 238).

(c) The wage and hours provisions of the Fair Labor Standards Act are applicable not only to employees engaged in commerce, as defined in the act, but also to employees engaged in the production of goods for such commerce. Employees engaged in the "production" of goods are defined by the act as including those engaged in "handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State." (Fair Labor Standards Act, sec. 3(j), 29 U.S.C., sec. 203(j), as amended by the Fair Labor Standards Amendments of 1949, 63 Stat. 910. See also the Division's Interpretative Bulletin, Part 776 of this chapter on general coverage of the wage and hours provisions of the act.) Where transportation of persons or property by motor vehicle between places within a State falls within this definition, and is not transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act because movement from points out of the State has ended or because movement to points out of the State has not yet begun, the employees engaged in connection with such transportation (this applies to employees of common, contract, and private carriers) are covered by the wage and hours provisions of the Fair Labor Standards Act and are not subject to the jurisdiction of the Secretary of Transportation. Examples are: (1) Drivers transporting goods in and about a plant producing goods for commerce; (2) chauffeurs or drivers of company cars or buses transporting officers or employees from place to place in the course of their employment in an establishment which produces goods for commerce; (3) drivers who transport goods from a producer's plant to the plant of a processor, who, in turn, sells goods in interstate commerce, the first producer's goods being a part or ingredient of the second producer's goods; (4) drivers transporting goods between a factory and the plant of an independent contractor who performs operations on the goods, after which they are returned to the factory which further processes the goods for commerce; and (5) drivers transporting goods such as machinery or tools and dies, for example, to be used or consumed in the production of other goods for commerce. These and other employees engaged in connection with the transportation within a State of persons or property by motor vehicle who are subject to the Fair Labor Standards Act because engaged in the production of goods for commerce and who are not subject to the Motor Carrier Act because not engaged in interstate or foreign commerce within the meaning of that act, are not within the exemption provided by section 13(b)(1). (Walling v. Comet Carriers, 151 F. (2d) 107 (C.A. 2); Griffin Cartage Co. v. Walling, 153 F. (2d) 587 (C.A. 6); Walling v. Morris, 155 F. (2d) 832 (C.A. 6), reversed on other grounds in Morris v. McComb, 332 U.S. 422; West Kentucky Coal Co. v. Walling, 153 F. (2d) 582 (C.A. 6); Hamlet Ice Co. v. Fleming, 127 F. (2d) 165 (C.A. 4); Atlantic Co. v. Walling, 131 F. (2d) 518 (C.A. 5); Chapman v. Home Ice Co., 136 F. (2d) 353 (C.A. 6); Walling v. Griffin Cartage Co., 62 F. Supp. 396 (E.D. Mich.), affirmed 153 F. (2d) 587 (C.A. 6); Dallum v. Farmers Coop. Trucking Assn., 46 F. Supp. 785 (D. Minn.); Walling v. Villaume Box & Lbr. Co., 58 F. Supp. 150 (D. Minn.); Walling v. DeSoto Creamery & Produce Co., 51 F. Supp. 938 (D. Minn.); Reynolds v. Rogers Cartage Co., 71 F. Supp. 870 (W.D. Ky.), reversed on other grounds 166 F. (2d) 317 (C.A. 6), Hansen v. Salinas Valley Ice Co. (Cal. App.), 144 P. (2d) 896)

§ 782.8 Special classes of carriers.

(a) The Interstate Commerce Commission consistently maintained that transportation within a State of consumable goods (such as food, coal, and ice) to railroad, docks, etc., for use on trains and steamships is not such transportation as is subject to its jurisdiction. (New Pittsburgh Coal Co. v. Hocking Valley Ry. Co., 24 I.C.C. 244; Corona Coal Co. v. Secretary of War, 69 I.C.C. 389; Bunker Coal from Alabama to Gulf Ports, 227 I.C.C. 485.) The intrastate delivery of chandleries, including cordage, canvas, repair parts, wire rope, etc., to ocean-going vessels for use and consumption aboard such vessels which move in interstate or foreign commerce falls within this category. Employees of carriers so engaged are considered to be engaged in commerce, as that term is used in the Fair Labor Standards Act. These employees may also be engaged in the "production of goods for commerce" within the meaning of section 3(j) of the Fair Labor Standards Act. See cases cited in § 782.7(c), and see Mitchell v. Independent Ice Co., 294 F. 2d 186 (C.A. 5), certiorari denied 368 U.S. 952, and Part 776 of this chapter. Since the Commission has disclaimed jurisdiction over this type of operation (see, in this connection § 782.7(b)), it is the Division's opinion that drivers, driver's helpers, loaders, and mechanics employed by companies engaged in such activities are covered by the wage and hours provisions of the Fair Labor Standards Act, and are not within the exemption contained in section 13(b)(1). (See Hansen v. Salinas Valley Ice Co. (Cal. App.), 144 P. (2d) 896.)

(b) The Interstate Commerce Commission disclaimed jurisdiction under the Motor Carrier Act of employees engaged in the transportation of mail under contract with the Post Office Department in vehicles used exclusively for that purpose. (See 3 M.C.C. 694, 697.) It would thus appear that such employees of mail contractors are not within the exemption provided by section 13(b)(1) of the Fair Labor Standards Act. Employees of mail contractors are not employees of the United States within the meaning of section 3(d) of the Fair Labor Standards Act. (Fleming v. Gregory, 36 F. Supp. 776; Thompson v. Daugherty, 40 F. Supp. 279; Mangann v. Long's Baggage Transfer Co. 39 F. Supp. 742.) Since they are considered "engaged in commerce" within the meaning of the act, it is the position of the Division that they are entitled to overtime compensation under section 7 of the Fair Labor Standards Act. (Repsher v. Streepy (E.D. Pa.), 7 Wage Hour Cases 769; 14 Labor Cases, par. 64,364; Thompson v. Daugherty, 40 F. Supp. 279; Mitchell v. Steinmetz et al., 36 Labor Cases par. 65,274, affirmed 268 F. (2d) 501; Mitchell v. Raines (E.D. Pa.), 30 Labor Cases, par. 70,015, 12 Wage Hour Cases 856; Mitchell v. Steinmetz (N.D. Ga.) 37 Labor Cases, par. 65,562, 14 Wage Hour Cases 202; Mitchell v. Blackburn (D. Md.), 37 Labor Cases, par. 65,399, 14 Wage Hour Cases 146. But see Magann v. Long's Baggage Transfer Co., 39 F. Supp. 742, contra.)

(c) Section 202(c)(2) of the Motor Carrier Act, as amended on May 16, 1942, makes section 204 of that act "relative to qualifications and maximum hours of service of employees and safety of operations and equipment," applicable "to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a * * * railroad * * * express company * * * motor carrier * * * water carrier * * * or a freight forwarder * * * in the performance within terminal areas of transfer, collection, or delivery service." Thus, drivers, drivers' helpers, loaders, and mechanics of a motor carrier performing pickup and delivery service for a railroad, express company, or water carrier are to be regarded as within the 13(b)(1) exemption. (See Levinson v. Spector Motor Service, 330 U.S. 649 (footnote 10); cf. Cedarblade v. Parmelee Transp. Co. (C.A. 7), 166 F. (2d) 554, 14 Labor Cases, par. 64,340.) The same is true of drivers, drivers' helpers, loaders, and mechanics employed directly by a railroad, a water carrier or a freight forwarder in pickup and delivery service. Section 202(c)(1) of the Motor Carrier Act, as amended on May 16, 1942, includes employees employed by railroads, water carriers, and freight forwarders, in transfer, collection, and delivery service in terminal areas by motor vehicles within the Interstate Commerce Commission's regulatory power under section 204 of the same act. See Morris v. McComb, 332 U.S. 422 and § 782.2(a). (Such employees of a carrier subject to part I of the Interstate Commerce Act may come within the exemption from the overtime requirements provided by section 13(b)(2). Cf. Cedarblade v. Parmelee Transp. Co. (C.A. 7), 166 F. (2d) 554, 14 Labor Cases, par. 64,340. Thus, only employees of a railroad, water carrier,

or freight forwarder outside of the scope of part I of the Interstate Commerce Act and of the 13(b)(2) exemption are affected by the above on and after the date of the amendment.) Both before and after the amendments referred to, it has been the Division's position that the 13(b)(1) exemption is applicable to drivers, drivers' helpers, loaders, and mechanics employed in pickup and delivery service to line-haul motor carrier depots or under contract with forwarding companies, since the Interstate Commerce Commission had determined that its regulatory power under section 204 of the Motor Carrier Act extended to such employees.

(d) The determinations of the Interstate Commerce Commission discussed in paragraphs (a), (b), and (c) of this section have not been amended or revoked by the Secretary of Transportation. These determinations will continue to guide the Administrator of the Wage and Hour Division in his enforcement of section 13(b)(1) of the Fair Labor Standards Act.

Signed at Washington, D.C., this 10th day of October 1971.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

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PART III

COST OF LIVING COUNCIL

PAY BOARD

PRICE COMMISSION

■

Economic Stabilization

Title 6—ECONOMIC STABILIZATION

Chapter I—Cost of Living Council

PART 101—COVERAGE, EXEMPTIONS AND CLASSIFICATION OF ECONOMIC UNITS

Part 101—Coverage, Exemptions and Classification of Economic Units is added to Title 6, Chapter I, Code of Federal Regulations.

Since the immediate implementation of Executive Order No. 11627 is required, the Council finds that notice and public procedure with respect to these regulations is impracticable and that good cause exists for making the regulations effective in less than 30 days. Therefore, Title 6 of the Code of Federal Regulations is amended by adding a new Title 6, by adding a new Chapter I, and by adding a new Part 101, as set forth below, effective at 12:01 a.m. on November 14, 1971.

DONALD RUMSFELD,
Director, Cost of Living Council.

Subpart A—General

Sec.
101.1 Purpose and scope.

Subpart B—Price Adjustments—Classification and Procedures

101.11 Price category I firms; prenotification and reporting requirements.
101.13 Price category II firms; reporting requirements.
101.15 Price category III firms; monitoring and spot checks.
101.17 Reclassification.

Subpart C—Pay Adjustments—Classification and Procedures

101.21 Category I pay adjustments; construction pay adjustments; prenotification requirements.
101.23 Category II pay adjustments; reporting requirements.
101.25 Category III pay adjustments; monitoring and spot checks.
101.27 Reclassification.

Subpart D—Exemptions; Items Not Included in Coverage

101.31 General.
101.32 Exemptions.
101.33 Items not included in coverage.

Subpart E—Definitions

101.51 Definitions.

Subpart F—Special Temporary Provisions

101.101 Special provisions applicable from Nov. 14, 1971–Jan. 1, 1972.

AUTHORITY: The provisions of this Part 101 issued pursuant to Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-588, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Executive Order No. 11627, October 15, 1971, 36 F.R. 20139.

Subpart A—General

§ 101.1 Purpose and scope.

(a) The purpose of this part is to establish the economic units and transactions which are covered by, and exempt from, the controls, standards and criteria established for the post-freeze economic stabilization period. The purpose is also to establish categories of economic units which must comply with the prenotification, reporting, and other procedural requirements prescribed by the Cost of Living Council. In general, such controls, standards and criteria are applicable to all price adjustments and to all pay adjustments, unless otherwise provided, regardless of the category into which any such adjustment falls. However, the procedural requirements vary depending upon the category.

(b) This part applies to all price adjustments and all pay adjustments which occur during the post-freeze economic stabilization period, except those which are specifically exempt under this part.

(c) This part does not apply to economic transactions which are not prices, rents, wages, and salaries within the meaning of the Economic Stabilization Act of 1970, as amended. Examples of transactions not within the meaning of the Act are:

(1) State or local income, sales and real estate taxes;

(2) Workmen's compensation payments;

(3) Welfare payments;

(4) Child support payments; and

(5) Alimony payments.

(d) The Cost of Living Council may allow such exceptions or permit such exemptions as it deems appropriate with respect to the coverage, classification, and other procedural requirements prescribed in this part. Requests for exceptions to and exemptions from the coverage, classification, and other procedural requirements of this part shall be submitted to the Cost of Living Council through procedures established by the Internal Revenue Service.

Subpart B—Price Adjustments—Classification and Procedures

§ 101.11 Price category I firms; prenotification and reporting requirements.

(a) A price category I firm is a firm with annual sales or revenues of $100 million or more.

(b) Each price category I firm shall submit a prenotification to the Price Commission of each proposed price adjustment in accordance with regulations issued by the Price Commission.

(c) No proposed price adjustment shall be put into effect by any price category I firm unless such price adjustment has been approved or permitted to take effect in accordance with regulations issued by the Price Commission.

(d) Each price category I firm shall submit quarterly reports to the Price Commission with information on prices, costs, and profits in accordance with regulations issued by the Price Commission.

§ 101.13 Price category II firms; reporting requirements.

(a) A price category II firm is a firm with annual sales or revenues from $50 million to $100 million.

(b) Each price category II firm shall submit quarterly reports to the Price Commission with information on prices, costs, and profits in accordance with regulations issued by the Price Commission.

§ 101.15 Price category III firms; monitoring and spot checks.

(a) A price category II firm is a firm with annual sales or revenues of less than $50 million.

(b) The price adjustments of price category III firms are not subject to prenotification or reporting. However, they are subject to monitoring and spot checks, as are price adjustments by firms in other categories.

§ 101.17 Reclassification.

(a) Upon the recommendation of the Price Commission, the Director of the Cost of Living Council has authority to reclassify firms so as to subject a price category II firm to the procedures applicable to price category I firms, and to subject price category III firms to the procedures applicable to price category I firms or price category II firms.

(b) If the pay adjustments of a firm are classified as category I pay adjustments, the Director of the Cost of Living Council has authority to reclassify the firm, for price adjustment purposes, as a price category I firm. If the pay adjustments of a firm are classified as category II pay adjustments and, for price adjustment purposes, the firm is classified in category III, the Director of the Cost of Living Council has authority to reclassify the firm as a price category II firm.

Subpart C—Pay Adjustments—Classification and Procedures

§ 101.21 Category I pay adjustments; construction pay adjustments; prenotification requirements.

(a) A category I pay adjustment means a pay adjustment which applies to or affects 5,000 or more employees or which applies to or affects employees who are engaged in construction as defined by section 11(a) of Executive Order No. 11588, March 29, 1971.

(b) Prenotification of each proposed category I pay adjustment shall be submitted to the Pay Board in accordance with regulations issued by the Pay Board.

(c) No proposed category I pay adjustment shall be put into effect unless such pay adjustment has been approved or permitted to take effect in accordance with regulations issued by the Pay Board.

§ 101.23 Category II pay adjustments; reporting requirements.

(a) A category II pay adjustment means a pay adjustment which applies to or affects from 1,000 to 5,000 employees.

(b) Each category II pay adjustment shall be reported to the Pay Board in accordance with regulations issued by the Pay Board.

§ 101.25 Category III pay adjustments; monitoring and spot checks.

(a) A category III pay adjustment means a pay adjustment which applies to or affects less than 1,000 employees.

(b) Category III pay adjustments are not subject to prenotification and reporting. However, they are subject to monitoring and spot checks as are pay adjustments by firms in other categories.

§ 101.27 Reclassification.

(a) Upon the recommendation of the Pay Board, the Director of the Cost of Living Council has authority to reclassify category II pay adjustments to category I pay adjustments, and to reclassify category III pay adjustments to category I pay adjustments or category II pay adjustments.

(b) If a firm is a price category I firm, the Director has the authority to classify all pay adjustments of the firm as category I pay adjustments. If a firm is a price category II firm, the Director has the authority to classify all pay adjustments of the firm as pay category II pay adjustments, unless that firm's pay adjustments are already classified as category I pay adjustments.

Subpart D—Exemptions; Items Not Included in Coverage

§ 101.31 General.

Price adjustments with respect to the property and services set forth in this subpart are exempt from or not included in the coverage of the economic stabilization program established pursuant to the Economic Stabilization Act of 1970 and Executive Order No. 11627, October 15, 1971.

§ 101.32 Exemptions.

(a) *Raw agricultural products.* Agricultural products which retain their original physical form and have not been processed. Processed agricultural products are products which have been canned, frozen, slaughtered, milled, or otherwise changed in their physical form. Packaging is not considered a processing activity. Examples:

Exempt	*Nonexempt*
Live cattle, calves, hogs, sheep and lambs.	Carcasses and meat cuts.
Live Poultry	Dressed broilers and turkeys.
Raw milk	Pasteurized milk and processed products such as butter, cheese, ice cream.
Shell eggs, packaged or loose.	Frozen, dried or liquid eggs.
Sheared or pulled wool.	Wool products.
Raw honeycomb honey.	Processed and blended honeybutter product.
Mohair.	
Hay: bulk, pelleted, cubed or baled.	Dehydrated alfalfa meal or alfalfa meal pellets.
Wheat	Flour.
Feed grains including:	
Corn	Mixed feed.
Sorghum	Cracked corn.
Barley	Rolled barley.
Oats	Rolled oats.
Soybean	Soybean meal and oil.
Leaf tobacco	Cigarettes and cigars.
Baled cotton, cottonseed, cotton lint.	Cotton yarn, cottonseed oil, cottonseed meal.
Fresh potatoes, packaged or not.	Frozen french fries, dehydrated potatoes.
Unmilled rice	Milled rice.
All raw nuts—shelled and unshelled.	Roasted, salted or otherwise processed nuts.
Fresh mushrooms	Canned or freeze dried mushrooms.
Fresh mint	Mint oil.
Fresh hops.	
Dried beans, peas, and lentils.	
Sugar beets and sugar cane.	Refined sugar.
Maple sap	Maple syrup and sugar.
All seeds for planting.	Seeds processed for other uses.
Raw coffee bean	Roasted coffee bean.
All fresh vegetables and melons including:	Canned and frozen vegetables.
Tomatoes.	
Lettuce.	
Sweet corn.	
Onions.	
Green beans.	
Cantaloupe.	
Cucumbers	Dill pickles.
Cabbage	Packaged slaw.
Carrots.	
Watermelons.	
Green peas.	
Asparagus.	
Pepper.	
Broccoli.	
Cauliflower.	
Spinach.	
Green lima beans.	
Honeydews.	
Escarole.	
Garlic.	
Artichokes.	
Eggplant.	
Brussel sprouts.	
Beets.	
Unpopped popcorn	Popped popcorn.
Stumpage, or trees cut from the stump.	Milled lumber.
All fresh or naturally dried fruits, packaged or not, including:	Canned, artificially dried frozen fruit or juices.
Fresh oranges	Glazed citrus peel.
Grapes and raisins.	Canned grapes, wine.
Apples	Applesauce.
Peaches	
Strawberries	
Grapefruit	
Pears	
Lemons	
Plums and prunes.	Canned prunes and prune juice.
Cherries	
Cranberries	
Avocados	
Blueberries	
Apricots	
Tangerines	
Olives, uncured.	Canned olives.
Nectarines	
Raspberries	
Blackberries	
Figs	
Tangelos	
Limes	
Dates	
Papayas	
Bananas	
Pomegranates	
Currants	
Persimmons	
Garden plants and cut flowers.	Floral wreath.

(b) *Seafood products.* Raw seafood products including those which have been shelled, shucked, iced, skinned, scaled, eviscerated, or decapitated.

(c) *Custom products and services.* (1) The following products when custom made to individual order:

(i) Leather goods;

(ii) Wigs and toupees;

(iii) Fur apparel;

(iv) Jewelry.

(2) The following custom services when provided to individual order:

(i) Tailoring of clothing;

(ii) Framing of pictures and mirrors;

(iii) Taxidermy.

(d) *Exports, imports, and shipping rates.* (1) Exports, including products sold to a domestic purchaser who certifies that the product is for export.

(2) Imports, but only the first sale into U.S. commerce.

(3) International ocean shipping rates.

(e) *Damaged and used products.* Damaged products and used products other than rebuilt products.

(f) *Government property.* (1) Abandoned or confiscated property sold by a government agency (Federal, State or local) pursuant to authorization of a court.

(2) Property sold by the United States, including lease-sales.

(g) *Real estate.* (1) Sales:

(i) Unimproved real estate.

(ii) Real estate with improvements completed prior to August 15, 1971.

(iii) Real estate with improvements completed on or after August 15, 1971, if

(*a*) The sales price is determined after the completion of construction; or

(*b*) The wage rates are known to the builder and are not altered by actions of the Pay Board after the sales price is established.

(2) Rentals:

(i) Industrial, farm, and nonresidential commercial property.

(*a*) Rental units, including houses, apartments, or any other residential rental property, on which construction is completed, and which are offered for rent for the first time, after August 15, 1971.

(*b*) Rehabilitated dwellings for which the cost of rehabilitation exceeds one-third of the total value of the rehabilitated property (including the cost of rehabilitation), offered for rent in the newly rehabilitated condition for the first time after August 15, 1971.

(h) *Securities and financial instruments.* (1) Securities as defined in § 101.51.

(2) Property subject to net leases as defined in 26 United States Code 163(4)(a).

(3) Commercial paper.

(4) Commodity futures sold on an organized commodities exchange but not including the commodity (unless otherwise exempt).

(i) *Miscellaneous.* (1) Royalties and other payments from the sale of copyrights, manuscripts, and like materials prepaid for publication.

(2) Dues paid to nonprofit organizations.

(3) Wages below the minimum wage established by Federal law.

(4) Insurance premiums charged for all new life insurance policies including ordinary, term, and group policies, and individual endowments and annuities (fixed and variable), but excluding credit-life insurance.

(5) Antiques.

(6) Art objects including paintings, etchings, and sculpture.

(7) Collectors' coins and stamps.

(8) Precious stones and mountings into which precious stones are set.

(9) Rock and stone specimens.

(10) Handicraft objects.

§ 101.33 Items not included in coverage.

The following items are not covered by this part or Executive Order No. 11627, October 15, 1971, on and after the effective date of this part.

(a) *Federal pay adjustments.* Federal Government employees' pay adjustments which are based upon Federal law and regulations and are determined by Presidential directives and adjustments in the compensation and allowances of members of the Armed Forces.

(b) *Raw sugar prices.* Raw sugar price adjustments, which are controlled under the provisions of the Sugar Act of 1948, as amended.

Subpart E—Definitions

§ 101.51 Definitions.

As used in this part—

"Annual sales or revenues" means the total income of a firm during its most recent fiscal year from whatever source derived.

"Cost of Living Council" means the Council established pursuant to Executive Order No. 11615, August 15, 1971, as amended, and continued under the provisions of Executive Order No. 11627, October 15, 1971.

"Employer" means a firm which employs one or more persons who receive a wage or salary.

"Exception" means a waiver in a particular case of the requirements of any order or regulation issued pursuant to the Economic Stabilization Act of 1970, as amended.

"Exemption" means a general waiver with respect to a certain class of property, services, or economic transactions set forth in Executive Order No. 11627, October 15, 1971, or these regulations and which excludes such property, services, or economic transactions from the application of the Economic Stabilization Act of 1970, as amended.

"Firm" means any person, croporation, partnership, joint-venture, or sole proprietorship or any other entity however organized, including charitable, educational, or other eleemosynary institutions and any Federal, State, or local governmental entity.

"Pay adjustment" means a change in wages and salaries which includes all forms of direct or indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation, including but not limited to: Vacation and holiday payments; bonus; layoff and severance pay plans; supplemental unemployment benefits; night shift, overtime, production; and incentive pay; employer contributions for insurance plans (but not including public plans, e.g. old age, survivors, health, and disability insurance under the Social Security system, Railroad Retirement Acts, Federal Insurance Contributions Act, Federal Unemployment Tax Acts, Civil Service Retirement Acts and the Carriers and Employees Tax Act); savings, pension, profit sharing, annuity funds, and other deferred compensation and welfare benefits; payments in kind, job perquisites; housing allowances; uniform and other work clothing allowances (but not including employer-required uniforms and work clothing whether or not for safety purposes); cost-of-living allowances; commission rates, stock options, and other fringe benefits; and benefits which result in more pay per hour or other unit of work or production (e.g. by shortening the workday without a proportionate decrease in pay).

"Pay Board" means the Board established pursuant to section 7, Executive Order No. 11627, October 15, 1971.

"Prenotification" means notice submitted to the Price Commission or Pay Board relating to a proposed price adjustment or pay adjustment.

"Price adjustment" means a change in the unit price of property or services or a decrease in the quality of substantially the same property or services, unless exempt or outside the scope of the Economic Stabilization Act of 1970, as amended.

"Price Commission" means the Commission established pursuant to section 8, Executive Order No. 11627, October 15, 1971.

"Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to our purchase, any of the foregoing.

Subpart F—Special Temporary Provisions

§ 101.101 Special provisions applicable from Nov. 14, 1971–Jan. 1, 1972.

Notwithstanding the provisions of §§ 100.11 and 100.21:

(a) Pay adjustments scheduled to take effect between November 14, 1971 and January 1, 1972 pursuant to existing contracts or pay practices in effect before November 14, 1971, need not be prenotified to, or approved by, the Pay Board, but must be reported to the Pay Board in accordance with its regulations and will be otherwise subject to such regulations. The provisions of this subparagraph shall not apply to pay adjustments which are subject to the provisions of Executive Order No. 11588, March 29, 1971.

(b) After November 14, 1971 and until January 1, 1972, a price category I firm is not required to submit a prenotification and obtain approval of a proposed price adjustment if it meets the criteria of § 300.51 of this title.

[FR Doc.71-16762 Filed 11-12-71;7:08 pm]

Chapter II—Pay Board

PART 201—STABILIZATION OF WAGES AND SALARIES

On August 15, 1971 the President announced a freeze on prices, rents, wages, and salaries for a period of 90 days ending midnight, November 13, 1971. By Executive Order No. 11627 of October 15, 1971, the President provided for an orderly transition from the 90-day general freeze to a more flexible system of economic restraints. Under that Order, the President established a Pay Board to be composed of 15 members (i.e., five representatives each from labor, business, and the general public) to be appointed by him. On November 8, 1971, the Pay Board adopted policies governing pay adjustments to be effective after the 90-day general freeze. A statement of that policy is set forth below as an appendix to regulations prescribed by the Pay Board.

Pursuant to the authority vested in the Pay Board by the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, Stat. 38), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971), and Cost of Living Council Order No. 3 (36 F.R. 20202, October 16, 1971), the Pay Board hereby adopts the following regulations (including the policy statement) in implementation of the President's economic program. A new Chapter II—Pay Board is hereby established in title 6—Economic Stabilization of the Code of Federal Regulations and a new Part 201—Stabilization of Wages and Salaries is added thereto.

Because of the need for immediate guidance from the Pay Board with respect to the provisions contained in these regulations, it is hereby found impracti-

cable to issue such regulations with notice and public procedure thereon under 5 U.S.C., sec. 553(b), or subject to the effective date limitation of 5 U.S.C., sec. 553(d).

Effective date. This part shall be effective at 12:01 a.m. on November 14, 1971.

GEORGE H. BOLDT,
Chairman of the Pay Board.

Subpart A—Introduction

AUTHORITY: The provisions of this Part 201 issued under Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, Stat. 38), Executive Order No. 11627 (36 F.R. 20139, Oct. 16, 1971), and Cost of Living Council Order No. 3 (36 F.R. 20202, Oct. 16, 1971).

Subpart A—Introduction

§ 201.1 Purpose.

The purpose of these regulations is to establish rules and standards to stabilize wages and salaries, as defined in § 201.3, in accordance with the provisions of Executive Order No. 11627, and to provide guidance and procedures for an orderly transition from the 90-day general freeze imposed by Executive Order No. 11615. All persons are required by law to comply with the provisions of the Economic Stabilization Act of 1970 as amended, and all Executive orders, regulations (including this regulation), circulars, and orders issued thereunder, and all persons are expected to comply voluntarily with such law, orders, and regulations. The policies governing pay adjustments, adopted by the Pay Board on November 8, 1971, are attached as an appendix to this part.

§ 201.2 Extent to which the regulations under this chapter supersede or affect prior regulations and other published matter.

(a) To the extent that any provision of Economic Stabilization Regulation No. 1, as amended, or any provision of the circulars issued pursuant thereto is inconsistent with the provisions set forth in this chapter, the provisions of this chapter shall be controlling.

(b) To the extent that neither the Cost of Living Council nor the Pay Board issues regulations with respect to specific matters concerning wages and salaries, such matters shall continue to be subject to Economic Stabilization Regulation No. 1, as amended, and the circulars issued pursuant thereto.

§ 201.3 Definitions.

For purposes of this part—

"Party at interest" means:

(1) A bargaining representative of employers who could be required to pay the wages and salaries in question, or in the absence of such bargaining representative, an employer who could be required to pay the wages and salaries in question; or

(2) A bargaining representative of employees who could receive payment of wages and salaries in question, or in the absence of such bargaining representative, an employee who could receive payment of wages and salaries in question.

"Wages and salaries" includes all forms of direct and indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation, including but not limited to: Vacation and holiday payments; bonuses; layoff and severence pay plans; supplemental unemployment benefits; night shift, overtime, and incentive pay; employer contributions for insurance plans (but not including public plans, e.g. old-age, survivors, health, and disability insurance under the Social Security system, Railroad Retirement Acts, Federal Insurance Contributions Acts, Federal Unemployment Tax Acts and Civil Service Retirement Acts); savings, pension, profit sharing, annuity funds, and other deferred compensation and welfare benefits; payments in kind; job prerequisites; housing allowances; uniform and other work clothing allowances (but not including employer-required uniforms and work clothing whether or not for safety purposes); cost-of-living allowances; commission rates, stock options, and other fringe benefits; and benefits which result in more pay per hour or other unit of work or production (e.g. by shortening the workday without a proportionate decrease in pay).

Subpart B—Pay Stabilization

§ 201.10 General wage and salary standard.

On and after November 14, 1971, the general wage and salary standard shall be applicable to new labor agreements and, where no labor agreement is in effect, to existing pay practices. On and after such date, permissible annual aggregate increases will be those normally considered supportable by productivity improvement and cost of living trends. Initially, the general wage and salary standard is established as 5.5 percent. The appropriateness of this figure will be reviewed periodically by the Pay Board, taking into account such factors as the long-term productivity trend of 3 percent, cost of living trends, and the objective of reducing inflation.

§ 201.11 Review of new contracts and pay practices in relation to the wage and salary standard.

In reviewing new contracts and pay practices, the Pay Board will consider ongoing collective bargaining and pay practices, and the equitable position of the employees involved, including the impact of recent changes in the cost of living upon the employees' compensation.

§ 201.12 Reduction of wages and salaries.

No reduction in wages and salaries being paid November 13, 1971, will be required pursuant to this part unless and to the extent that such wages and salaries were increased in violation of the Economic Stabilization Act of 1970, as amended, and orders and regulations issued pursuant thereto.

§ 201.13 Scheduled increases in wages and salaries for services rendered after August 15, 1971, and before November 14, 1971.

Payments of scheduled increases in wages and salaries for services rendered by employees after August 15, 1971, and before November 14, 1971, which were not made because prohibited by the freeze, may be made retroactively only if approved by the Pay Board. The Pay Board may approve such payments in the following circumstances applicable to individual cases or categories of cases:

(a) It is demonstrated that the employer of the employees on whose behalf such payment is being sought raised the prices for his products or services prior to August 16, 1971, in anticipation of wage and salary increases scheduled to be paid to such employees after August 15, 1971.

(b) It is demonstrated that a wage and salary agreement or pay schedule or practice adopted after August 15, 1971, succeeded an agreement, schedule, or practice that expired or terminated prior to August 16, 1971, and retroactivity is demonstrated to be an established past practice of an employer and his employees or retroactivity had been agreed to prior to November 14, 1971.

(c) It is demonstrated that the proposed retroactive payment satisfies such further criteria as the Pay Board may hereafter establish to remedy severe inequities.

§ 201.14 Wage and salary increases effective after November 13, 1971.

Existing contracts and pay practices previously set forth will be allowed to operate according to their terms except that specific contracts or pay practices are subject to review, when challenged by a party at interest or by five or more members of the Pay Board, to determine whether any increase is unreasonably inconsistent with the criteria established by this Board. In reviewing existing contracts and pay practices, the Pay Board will consider ongoing collective bargaining and pay practices and the equitable position of the employees involved, including the impact of recent changes in the cost of living upon the employee's compensation.

§ 201.15 Unaffected wages and salaries.

Until further action of the Pay Board, those classes of wages and salaries which were held by the Cost of Living Council not to be subject to control by the freeze shall not be affected by this part. However, this section shall not exempt any contracts subject to Executive Order No. 11588 of March 29, 1971, relating to the stabilization of wages and prices in the construction industry, as amended by Executive Order No. 11627 of October 16, 1971, further providing for the stabilization of the economy, from the general wage and salary standards in this part.

APPENDIX

POLICIES GOVERNING PAY ADJUSTMENTS ADOPTED BY THE PAY BOARD NOVEMBER 8, 1971

1. Millions of workers in the Nation are looking to the Pay Board for guidance with respect to permissible changes in wages, salaries, various benefits and all other forms of employee total compensation. It is imperative to have a simple standard with as broad a coverage as possible at as early a date as possible. There is probably a need for exceptions and for individual consideration of special situations as soon as practical, and guidance to the millions whose pay relations are relatively simple is an early essential.

2. This general pay standard is intended, in conjunction with other needed measures, to meet the objectives which led to the establishment of this Board.

3. The general pay standard should be applicable to:

(1) Changes that need approval before becoming effective;

(2) Changes that must be reported when they become effective; and

(3) All other changes requiring compliance but not requiring specific approval or reporting.

4. (a) Effective November 14, 1971, the general pay standard shall be applicable to new labor agreements and, where no labor agreement is in effect, to existing pay practices. The general pay standard would provide:

On and after November 14, 1971, permissible annual aggregate increases would be those normally considered supportable by productivity improvement and cost of living trends. Initially, the general pay standard is established as 5.5 percent. The appropriateness of this figure will be reviewed periodically by the Board, taking into account such factors as the long-term productivity trend of 3 percent, cost of living trends, and the objective of reducing inflation.

In reviewing new contracts and pay practices, the Pay Board shall consider ongoing collective bargaining and pay practices and the equitable position of the employees involved, including the impact of recent changes in the cost of living upon the employees' compensation.

(b) Existing contracts and pay practices previously set forth will be allowed to operate according to their terms except that specific contracts or pay practices are subject to review, when challenged by a party at interest or by five or more members of the Board, to determine whether any increase is unreasonably inconsistent with the criteria established by this Board. In reviewing existing contracts and pay practices, the Pay Board shall consider ongoing collective bargaining and pay practices and the equitable position of the employees involved, including the impact of recent changes in the cost of living upon the employees' compensation.

(c) Scheduled increases in payment for services rendered during the "freeze" of August 16 through November 13, 1971, may be made only if approved by the Board in specific cases. The Board may approve such payments in cases which are shown to meet any of the following criteria:

(i) Prices were raised in anticipation of wage increases scheduled to occur during the "freeze."

(ii) A wage agreement made after August 15, 1971 succeeded an agreement that had expired prior to August 16, 1971, and retroactivity was an established practice or had been agreed to by the parties.

(iii) Such other criteria as the Board may hereafter establish to remedy severe inequities.

5. Following approval of special procedures by the Pay Board with respect to hearing "prior approval" cases and other special situations, application may be made for an exception to the general pay standard and for a hearing on such matters as inequities and sub-standard conditions.

6. No retroactive downward adjustment of rates now being paid will be required by operation of the general pay standard unless the rates were raised in violation of the freeze or of the general pay standard.

7. Provisions may be considered for vacation plans, in-plant adjustments of wages and salaries, in-grade and length of service increases, payments under compensation plans, transfers and the like.

[FR Doc.71-16753 Filed 11-12-71;4:43 pm]

Chapter III—Price Commission

PART 300—PRICE AND RENT STABILIZATION

It is the purpose of the regulations hereby adopted to provide guidance and procedures for the implementation of Price Commission policies designed to achieve a goal of holding average price increases across the economy to a rate of no more than 2½ percent per year. It is expected that all persons will voluntarily comply with the provisions contained in these regulations and all orders and other guidance issued hereunder.

In order to prescribe regulations for the stabilization of prices and rents after November 13, 1971, a new Chapter III—Price Commission is hereby established in Title 6—Economic Stabilization of the Code of Federal Regulations, and a new Part 300—Price and Rent Stabilization is added thereto and the following regulations are hereby adopted effective November 14, 1971:

Subpart A—General

Subparts B–E [Reserved]

Subpart F—Base Price

Subpart G—Procedures and Administration

AUTHORITY: The provisions of this Part 300 issued under the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971), and Cost of Living Council Order No. 4 (36 F.R. 20202, October 16, 1971).

Subpart A—General

§ 300.001 Summary.

The rules contained in this subpart relate to increases in prices and rents which are allowable after November 13, 1971, with respect to:

(a) Sales and leases of personal property,

(b) The furnishing of services, and

(c) Sales and leases of real property.

See § 300.011 for the general rule regarding increases in prices with respect to sales and leases for property and with respect to services. For special rules applicable to—

(d) Manufacturers, see § 300.012,

(e) Retailers and wholesalers, see § 300.013,

(f) Service organizations, see § 300.014,

(g) Rental property, see § 300.015,

(h) Regulated industries, see § 300.016.

For rules relating to firms required to notify the Price Commission before a price and rent increase can take effect, see § 300.051. For rules relating to firms required to make periodic reports to the Price Commission, see § 300.052. See § 300.101 for definitions of terms used in this subpart. For rules with respect to certain special situations, see § 300.201 and following. For rules exempting certain transactions from the operation of this subpart, see § 300.401.

§ 300.011 General rule.

Except as otherwise provided in this subpart, no person may charge a price or rent, with respect to any transaction involving sales or leases of property or services occurring after November 13, 1971, which exceeds the base price as determined under the rules prescribed in Subpart F of this part.

§ 300.012 Manufacturers.

A manufacturer may charge a price in excess of the base price (as determined under Subpart F of this part), to reflect allowable cost increases in effect on or after November 14, 1971, reduced to reflect productivity gains; provided, how-

ever, that the effect of all of a manufacturer's price changes is not to increase its profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period (as defined in § 300.101).

§ 300.013 Retailers and wholesalers.

(a) *In general.* A person engaged in retailing or wholesaling may charge a price in excess of the base price where—

(1) The customary initial percentage markup with respect to the property sold is equal to or less than such person's customary initial percentage markup which prevailed during the base period (as defined in § 300.101), provided

(2) The effect of all such person's price changes is not to increase its profit margin as a percentage of sales, before income taxes, over that which prevailed during the base period.

(b) *Posting Requirement.* (1) a retailer is required to display prominently at the place of sale, base prices with respect to:

(i) All food products (except those which are exempt under the provisions of § 300.401); and

(ii) Those 40 items in each department which have the highest sales volume, or those items which account for 50 percent of total sales in each department, whichever is less.

Such base prices must be posted on or before January 1, 1972. No increase in price is allowable under paragraph (a) of this section until such base prices have been posted.

(2) A retailer must utilize the following interim procedure until base prices are posted under subparagraph (1) of this paragraph, with respect to base prices for all products (except for those exempted under § 300.401), and thereafter, with respect to base prices not posted under subparagraph (1) of this paragraph:

(i) There shall be posted on each floor of his establishment at least one sign (minimum of 22" x 28"), as specified below, announcing availability of base price information:

BASE PRICE INFORMATION

Information regarding the lawful base price for any item sold by this store not posted may be obtained by filling in a Base Price Information Request Form available at (specify location) and by handing it to (fill in). You will receive a speedy answer by mail.

(ii) There shall be made available in at least one location on each selling floor, Base Price Information Request Forms, as specified below:

BASE PRICE INFORMATION REQUEST FORMS

Please furnish me with your base price for the following item sold in your store:

Item _____
(Describe)
Retail price _____
Style No. _____
Department where sold _____
Name _____
Address _____
_____ Zip _____

(c) The retailer shall respond to each such written request for base price information within 48 hours from receipt of the request using a letter, in substance similar to the one specified below, and signed by the owner or by an officer of the company:

To: (Name, Address, City, Zip)

Dear _____:

In reply to your request, we are pleased to inform you that our base price for _____ _____ is $_____.

Sincerely,

_____
Owner or company officer

§ 300.014 Service organizations.

A person which is a service organization may charge a price in excess of the base price with respect to the furnishing of services or the leasing of personal property only to reflect allowable cost in effect on November 14, 1971, and cost increase incurred after November 14, 1971, reduced to reflect productivity gains: *Provided, however,* That such increased price shall not result in an increase in such person's profit margin as a percentage of sales, before income taxes, which prevailed during the base period.

§ 300.015 Rental of real property.

(a)–(c) [Reserved]

(d) *Special record requirement.* Persons leasing or offering to lease any real property shall maintain records showing—

(1) The base price (as defined in Subpart F of this part) charged with respect to each unit of real property,

(2) The reason for any difference in the price described in subparagraph (1) of this paragraph and the price allowable on or after November 14, 1971, and

(3) The reason for any difference between the price described in subparagraph (1) of this paragraph and the maximum price allowable during the period beginning August 15, and ending November 13, pursuant to Executive Order 11615.

Such records shall be made available upon the request of any tenant, prospective tenant, or representative of the Price Commission.

§ 300.016 Regulated public utilities.

(a) *In general.* A person which is a regulated public utility as defined in section 7701(a)(33) of the Internal Revenue Code of 1954 (26 U.S.C. section 7701(a)(33)) may charge a price, rate, or tariff in excess of the base price if such increase has been approved by a regulatory agency. A regulated person who had gross receipts of $100 million or more during its most recent fiscal year ending on or before November 13, 1971, shall inform the Price Commission of all requests for rate increases and immediately notify the Commission in writing of any agency order granting an increase and of any other authorized increase. A regulated person who had gross receipts between $50 and $100 million during its most recent fiscal year ending on or before November 13, 1971, shall immediately notify the Commission in writing of any agency order granting an increase and of any other authorized increase.

(b) *Special rule.* In the case of rate increases which were approved by a regulatory agency before November 14, 1971, but which were not permitted to take effect due to Executive Order 11615, such rate increase may take effect with respect to transactions occurring after November 13, 1971. However, before such increases may take effect, such regulatory agency shall review such increases with regard to their consistency with the purposes of the Economic Stabilization Act of 1970, as amended.

§ 300.051 Prenotification firms.

(a) *In general.* A person which is a prenotification firm (as defined in § 300.101) may not charge a price in excess of the base price before the Price Commission has approved such increased price. However, in the event the Price Commission does not act upon a requested price increase within 30 days after receipt by the Price Commission of the request for such increase, such increase may go into effect.

(b) *Exceptions.* Prenotification requirements are not applicable:

(1) For wholesalers and retailers.

(2) With respect to price changes resulting from calculation of a base price under Subpart F of this part or from the operation of § 300.203, relating to contracts entered into prior to August 15, 1971.

(3) In respect of any price increase which reflects increases in costs of labor which become effective during the period November 14, 1971, through December 31, 1971.

(c) *Manner of notification.* Such person shall notify the Price Commission of its intention to raise the price of a product or service on forms to be prescribed by the Commission and shall provide information sufficient to enable the Commission to make a determination with respect to such proposed increase. If the Commission finds that the information submitted is not sufficient to make such a determination it shall notify the person and the 30-day period provided in paragraph (a) of this section shall begin to run from the time the additional information is submitted.

(d) *Reporting requirement.* Such person shall file a quarterly report with the Price Commission within 15 days after the end of each fiscal quarter commencing with its first fiscal quarter ending after November 13, 1971. Such quarterly reports shall be made on forms to be prescribed by the Commission and shall contain the information required by such forms.

§ 300.052 Reporting firms.

(a) *In general.* A person which is a reporting firm shall file a quarterly report with the Price Commission in the form provided in paragraph (b) of this section within 15 days after the end of each fiscal quarter commencing with its first fiscal quarter ending after November 13, 1971.

(b) *Manner of filing.* The quarterly report required under paragraph (a) of this section shall be made on forms to be prescribed by the Commission and shall

contain the information required by such forms.

§ 300.080 Other considerations.

In making any determination, the Price Commission will take into account whatever factors it considers relevant to an equitable resolution of the case and considers necessary to achieve the overall goal of holding average increases across the economy to a rate of no more than 2½ percent per year.

§ 300.101 Definition of terms.

(a) *In general.* Except as otherwise provided, the definitions contained in this section shall only apply for purposes of Subpart A of this part.

(b) *Organizations subject to freeze*—(1) *Manufacturer.* The term "manufacturer" means a person who carries on the trade or business of making, fabricating, or assembling a product or commodity by manual labor or machinery for sale to another person or persons.

(2) *Retailer and wholesaler*—(i) *Retailer.* The term "retailer" means a person who carries on the trade or business of selling property to ultimate consumers.

(ii) *Wholesaler.* The term "wholesaler" means a person who carries on the trade or business of purchasing property and, without substantially changing the form of such property, reselling it to another person who is not the ultimate consumer.

(3) *Service organization.* The term "service organization" means a person who carries on the trade or business of selling or making available services, including the leasing of property to another person or persons. The term also includes nonprofit organizations, governments and governmental instrumentalities which carry on such activities. The term also includes a person which provides professional services.

(4) *Person.* The term "person" includes any individual, trust, estate, partnership, association, company, corporation, or instrumentality of a governmental unit. However, such term does not include a foreign government, an instrumentality of a foreign government or an international organization.

(c) *Accounting terms*—(1) *Customary initial percentage markup.* The term "customary initial percentage markup," means, the customary initial percentage markup, determined on an item, product line, department, store or other pricing unit basis according to the person's customary pricing practice. For these purposes, the initial markup is that markup which is applied to merchandise when first offered for sale.

(2) *Allowable cost.* The term "allowable cost" means any cost, direct or indirect, unless disallowed by the Price Commission.

(3) *Profit margins.* The term "profit margin," means the ratio that net profits (determined before taxes) bears to gross sales as reported on the person's published financial statement and in accordance with generally accepted accounting principles consistently applied. For purposes of determining net profits, extraordinary items and taxes on income shall not be taken into account.

(d) *Reporting requirements*—(1) *Firm.* The term "firm" means a person whose gross income, in whole or in part, is derived from sales. For purposes of this section, if a firm or firms are controlled directly or indirectly by another firm, the controlled firm or firms and the controlling firm shall be treated as a single firm.

(2) *Reporting firms.* The term "reporting firm" means a firm subject to the requirements of § 101.13 of Chapter I, Part 101 of this title.

(3) *Prenotification firms.* The term "prenotification firm" means a firm subject to the requirements of § 101.11 of Chapter I, Part 101 of this title.

(e) *Base period*—(1) *Base period.* The term "base period" means the average of any two of a person's last 3 fiscal years ended prior to August 15, 1971, the selection of such 2 fiscal years to be made by such person.

(2) *Markup base period.* The term "markup base period" shall mean, at the person's option, either

(i) The last customary initial markup prior to November 14, 1971, or

(ii) The person's last fiscal year ending prior to August 14, 1971.

(f) *Base price.* The term "base price" means base price as defined in Subpart F of this part.

(g) *Other definitions*—(1) *Product.* The term "product" means an item of tangible personal property offered for sale to another person or persons.

(2) *Product line.* The term "product line," means an aggregation of products of the same manufacturer or different manufacturers, substantially similar as to intended function, usage, and structure, and offered for sale simultaneously, or within the same commercial season, by a person or persons.

(3) *United States.* The term "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico.

§ 300.201 Seasonal patterns.

(a) *In general.* Notwithstanding any provisions of this subpart, prices (including rents) which normally fluctuate in distinct seasonal patterns may be adjusted subject to the provisions of this section.

(b) *Distinct fluctuation.* Prices must show a large or otherwise distinct fluctuation at a specific, identifiable point in time. Such distinct fluctuation must be an established practice that has taken place in each of the past 3 years. New persons may determine their qualifications from those generally prevailing with respect to persons similarly situated, selling or leasing in the same marketing area. If there are no such similar persons in the immediate area, qualification may be established by reference to the nearest similar marketing area.

(c) *Time of price fluctuation.* The price fluctuation referred to in paragraph (b) of this section may not take place at a time other than the time at which such fluctuation took place in the preceding year unless the date of the price fluctuation is tied to a specific event such as a previously planned introduction of new models.

(d) *Allowable price.* If the requirements of paragraphs (b) and (c) of this section are met, the maximum price which may be charged by such person shall be either—

(1) The base price determined under the provisions of Subpart F of this part, or

(2) The price charged by such person during the first 30 days of the period following the seasonal price adjustment in the preceding year, whichever is greater. For purposes of this subparagraph (2), the price charged during such 30-day period shall be the weighted average of the prices charged on all transactions occurring during such period.

(e) *Limitation.* Notwithstanding the provisions of paragraph (d), of this section, the price charged by such person may not result in an increase of its profit margin as a percentage of sales, before income taxes, over that prevailing during the base period.

(f) *Return to nonseasonal prices.* Prices must be adjusted downward at the same date or identifiable point in time as in the previous season.

§ 300.202 Taxes.

Notwithstanding any other provision of this subpart, prices with respect to transactions occuring after November 13, 1971, may be increased dollar-for-dollar to reflect increases in excise taxes (including sales and use taxes), and duties on imports (including the import surcharge imposed by the President on August 15, 1971), but not increased franchise, gross receipts, property, or income taxes.

§ 300.203 Contracts entered into prior to August 15, 1971.

Notwithstanding any other provisions of this subpart, the price specified in any binding contract for the sale of property or services entered into prior to August 15, 1971, with respect to any delivery or performance occurring after November 13, 1971, shall be allowable provided that the contract price shall not exceed that amount which would result in an increase in the person's profit margin as a percentage of sales, before income taxes, over that prevailing during the base period.

§ 300.204 Formula-determined rentals.

Leases of personal or real property entered into prior to August 15, 1971, in which the periodic rental price is determined by means of a formula specified in the lease agreement may continue with such formula in effect. However, any increases in the periodic rental price due to the passage of time or increases in the consumer price index shall not be allowed.

§ 300.401 Exemptions.

The provisions of this Part 300 shall apply to all transactions involving the sale or lease of property and services except those enumerated in Subpart D of Part 10 of this title.

§ 300.498 May 25, 1970, limitation date.

No provision in this subpart shall operate to require a person to establish a price or rent which is lower than the average price which was received by the person in arms-length transactions involving the property or service on May 25, 1970. In cases where there were no arms-length transactions on May 25, 1970, involving the person, the nearest date preceding May 25, 1970, on which such a transaction did occur shall deemed to be May 25, 1970, for purposes of this section. However, the rules contained in this section shall not apply if the person did not offer the property or service on May 25, 1970, due to causes other than the temporary closing of his business.

§ 300.499 Price Commission address.

Any document, report, or other information required by these regulations to be sent directly to the Price Commission shall be addressed to—Price Commission, 2000 M Street NW., Washington, DC 20508.

Subparts B—E [Reserved]

Subpart F—Base Price

§ 301.501 In general.

The rules in this subpart relate to the determination of the base price for the purposes of applying the provisions contained in Subpart A of this part, after November 13, 1971, with respect to:

(a) Sales and leases of personal property,

(b) The furnishing of services, and

(c) Sales and leases of real property.

The base price is either (1) the ceiling price permitted for the period beginning August 15, 1971, and ending November 13, 1971, or (2) such ceiling price as adjusted in accordance with the rules provided in this subpart, which shall then constitute the base price. See § 300.505 for rules relating to the determination of the base prices with respect to sales and leases of personal property and with respect to services, § 300.507 for rules relating to the determination of base prices with respect to sales and leases of real property, and § 300.509 for rules relating to the determination of base prices with respect to sales and leases of new property and with respect to new services, as therein defined.

§ 300.505 Sales and leases of personal property and services.

(a) *Sales of personal property and services.* The base price with respect to sales of personal property and services is the highest price charged by the person to a specific class of purchasers in a substantial number of transactions involving such personal property or services during the freeze base period (as defined in § 300.513).

(b) *Leasing of personal property.* The base price with respect to the leasing of personal property is the highest price charged to a specific class of purchasers with respect to leases of the same or substantially identical personal property in a substantial number of transactions during the freeze base period.

(c) *Ten-percent rule.* For purposes of paragraphs (a) and (b) of this section and paragraph (b) of § 300.507, the highest price in a substantial number of transactions during the freeze base period shall be the highest price at or above which 10 percent of the units were priced in transactions with a specific class of purchasers during the freeze base period.

§ 300.507 Sales and leases of real property.

(a) *Sales of real property.* This section applies to sales of real property not exempted under § 300.401. The base price with respect to the sale of any interest in real property which is held by the person for sale in the ordinary course of trade or business is the highest price received with respect to the same type of interest in similar real property during the freeze base period. In the case of a sale of an interest in real property which is not held for sale in the ordinary course of a trade or business, such interest shall be deemed to be new property for purposes of paragraph (d) of § 300.509.

(b) *Leases of real property*—(1) *In general.* The base price for a lease of an interest in real property is the highest price charged by the person with respect to the same or substantially identical rental units in a substantial number of transactions during the freeze base period. A provision is a lease of an interest in real property executed prior to August 15, 1971, which provides for an increased rental to take effect August 14, 1971, may take effect after November 13, 1971, to the extent such increased rental does not exceed the base price for the rental of such real property.

(2) *Property vacant during freeze base period.* If the property had been vacant for more than 1 year prior to the beginning of the lease period, the provisions of § 300.509(b) relating to new real property shall apply.

§ 300.509 New property and new services.

(a) *In general.* For purposes of this section, new property or new services means property or services which the person has not offered for sale (or lease in the case of property) at any time during the 1-year period immediately preceding the date on which the person is offering the property or service for sale (or lease).

(b) *Lease of real property.* In the case of a person offering real property for lease which was never previously leased, the base price shall be determined by a computation based on the average arms-length price received by persons leasing comparable property in the same marketing area. For purposes of determining the average price referred to in the preceding sentence, only a quantity of transactions which is not insubstantial in relation to the total number of such transactions need be taken into consideration. A property, or part thereof, which undergoes a substantial capital improvement shall be treated as new property for purposes of a lease. For purposes of this paragraph a substantial capital improvement means a permanent improvement or betterment made to increase the value of the property or to restore the property or part thereof, the cost of which equals or exceeds at least 3 months' rent and exceeds $250.

(c) *Personal property or services.* Personal property or service shall be deemed new if substantially different from other property or services in purpose, function, quality, or technology or if the use of such property or service effects a substantially different result. Property or services that differ from other property or services only in appearance, arrangement, combination, or function shall not be considered as new. A change in fashion, style, form, or packaging will not ordinarily be deemed to create a new property or service. A property, or part thereof, which undergoes a substantial capital improvement shall be treated as new property for purposes of a lease. For purposes of this paragraph a substantial capital improvement means a permanent improvement or betterment made to increase the value of the property or to restore the property, the cost of which equals or exceeds at least 3 months' rent and which exceeds $100.

(d) *Base price determination.* In the case of a person offering new property or new services, the base price shall be deemed to be, at the election of such person, either—

(1) The price determined under the method prescribed in paragraph (e) of this section, or

(2) The price determined under the method prescribed in paragraph (f) of this section.

(e) *First method.* The method referred to in paragraph (d)(1) of this section is a method by which a person may determine the price with respect to new property or services by a computation based on the unit cost (including direct and indirect costs) of a similar property or services of such person plus a factor for profit (before income taxes) which equals the profit rate actually earned with respect to such similar property or services. The rules in this paragraph shall not be applicable to transactions involving property or services with respect to which the person offers no other property or services which are similar thereto.

(f) *Second method.* The method referred to in paragraph (d)(2) of this section is a method by which a person may determine the price with respect to new property or services by a computation based on the average prices received in a substantial number of arms-length transactions by persons selling or leasing comparable property or services in the same marketing area.

§ 300.511 Geographic limitation.

The provisions of this subpart shall not be applicable to transactions for sales,

leases, or services occuring outside the United States. For purposes of this paragraph, a transaction shall be deemed to occur outside the United States if delivery of the property or rendering of the service which is the subject matter of the transaction occurs outside the United States, or if real estate which is the subject matter of the transaction is located outside the United States. If personal property which is the subject of a lease is used both inside and outside the United States during the period of the lease, the transaction shall be deemed to have occurred exclusively in the United States and the provisions of this subpart shall apply. Similarly, if services are partially rendered in the United States and partially outside the United States, the services shall be deemed to have been performed exclusively in the United States.

§ 300.513 Definitions.

(a) *In general.* Unless otherwise indicated, the definitions contained in this section shall apply for purposes of Subparts F and G of this part.

(b) *Transaction.* A "transaction" shall be deemed to occur at the time and place a binding contract is entered into between the parties to the transaction. A "transaction" shall mean an arms-length transaction, and shall include only transactions between unrelated persons which are not members of a controlled group.

(c) *United States.* The term "United States" means the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) *Person.* The term "person" includes any individual, estate, trust, partnership, association, company, corporation, governmental unit, or instrumentality of a governmental unit. However, such term does not include a foreign government, an instrumentality of a foreign government, an international organization.

(e) *Freeze base period.* The term "freeze base period" means either—

(1) The period beginning July 16, 1971, and ending August 14, 1971, or

(2) If a person had no transaction during the period specified in subparagraph (1) of this paragraph, the nearest preceding 30-day period in which he had a transaction.

(f) *Unrelated person.* The term "unrelated person" refers to a person other than a person described in 26 U.S.C. section 267(b), as amended.

(g) *Controlled group.* The term "controlled group" means a controlled group of corporations as defined in 26 U.S.C. section 1563(a).

(h) *Price.* The term "price" includes commissions, membership dues, margins, rates, fees, charges, tariffs, and premiums without regard to the form in which paid. The term also includes rents for the lease of real or personal property.

(i) *Service.* The term "service" includes all services rendered by one person for another person other than in an employment relationship (determined under the normal common law rules). The term also includes for example, professional services of any kind and services rendered by membership associations for which dues are charged.

(j) *Sale.* The term "sale" includes all sales, exchanges, transfers, and dispositions.

(k) *Lease.* The term "lease" includes any contract for the use of real or personal property of any description.

(l) *Rent.* The term "rent" means any price for the use of real or personal property of any description. The term also includes any charge, no matter how denominated in the lease or other agreement, for the use of any property or for any service in connection with the use of leased property.

(m) *Class of purchasers.* The term "class of purchasers" means purchasers to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between those purchasers and other purchasers. The term "customary price differentials" includes, but is not limited to, price distinctions based on discounts, allowances, add-ons, premiums, and extras based on differences in volume, grade, quality, or location or type of purchaser, or terms or conditions of sale or delivery.

Subpart G—Procedure and Administration

§ 300.601 Records and ceiling price lists.

(a) *In general.* Any person who sells property or services, or leases property subject to the price and rent stabilization requirements of this Part 300 shall keep such permanent books of account or records as are sufficient to establish the base prices for all such property or services offered for sale or lease by such person and the prices at which such property or services were actually sold or leased.

(b) *Inspection of records or lists.* Records required to be maintained under paragraph (a) of this section shall be made available for inspection at any time upon the request of an officer or employee of the Internal Revenue Service for the purpose of ensuring compliance with the requirements of this part.

(c) *Special rule for imported items.* In addition to the records and lists required to be maintained under paragraphs (a) and (b) of this section, any item which has been imported into the United States and upon which an import surcharge has been imposed by the President in conjunction with other measures taken under the Economic Stabilization Act of 1970, as amended, shall, when sold, clearly have indicated upon the accompanying sales ticket or invoice the exact amount of the import surcharge the seller is passing on to the customer or that such an import surcharge though so imposed, is not being passed on.

(d) *Period for keeping records.* All records required to be kept under this section shall be maintained and preserved by the person required to keep such records for at least 4 years after the last day of the calendar year in which the transactions or other events recorded in such accounts or records occurred or the property was acquired by such person, whichever is later.

§ 300.612 Exceptions by ruling.

(a) *In general.* The Chairman of the Price Commission, or his delegate, will by rulings make such exceptions from the operation of this Part 300 as the Price Commission deems necessary for the purpose of preventing or correcting gross inequities.

(b) *Requests for exceptions.* Except as otherwise prescribed by the Price Commission, persons requesting exceptions from the operation of this Part 300 should submit their request, in writing, to the District Director of Internal Revenue for the district in which such person has his residence or principal place of business. The request should state the reason why the exception is being requested and should contain sufficient information to establish to the satisfaction of the Price Commission that—

(1) The application of the provisions of this part to such person would result in a serious hardship or gross inequity, and

(2) That the request for exception is not part of a plan having as one of its principal purposes the avoidance of the purposes of the Economic Stabilization Act of 1970, as amended, and this Part 300. (See § 300.613 for a more detailed description of the manner in which a request for determination by the Price Commission should be made.)

§ 300.613 Rulings.

(a) *In general.* In the interest of sound administration of the Economic Stabilization Act of 1970, as amended, and this Part 300, the Internal Revenue Service will answer inquiries of persons regarding their status for price and rent stabilization purposes and as to the applicability of this Part 300 to their proposed acts or transactions.

(b) *Price stabilization ruling.* A "Price Stabilization Ruling" is an official interpretation of the law by the Internal Revenue Service which has been published in the Price Stabilization Bulletin. Price Stabilization Rulings are published for the information and guidance of the Price Commission, Internal Revenue Service officials and others concerned.

(c) *Ruling guidelines.* (1) Rulings will be issued only with respect to prospective transactions,

(2) Rulings will not be issued on alternative plans of proposed transactions or on hypothetical situations.

(3) A ruling will not be issued if the national office of the Internal Revenue Service knows or has reason to believe that the same or identical issue in connection with a possible violation of this part by the person who is the subject of the ruling request is before any field office of the Service or any other agency charged with enforcement of this part.

(4) Further, a ruling will not be issued with respect to a matter upon which a recent court decision adverse to the Government has been handed down until the Government has decided whether to follow the decision or litigate further.

(d) *Instructions.* Any person requesting a ruling should direct such request, in writing to the District Director of Internal Revenue for the district in which such person has his residence or principal place of business. Each request for a ruling must include—

(1) A complete statement of all such information as is relevant to the status of the person and proposed transaction under this Part 300,

(2) Copies of all relevant documents affecting such status or transaction, and

(3) A statement, executed under penalty of perjury, that such statements and documents, to the knowledge of the person making the request, are true and accurate. Only one ruling request may be made with respect to a particular transaction, and no ruling request may be made with respect to an issue described in paragraph (c) (3) of this section.

(e) *Determination letters.* In the discretion of the Internal Revenue Service the request of the person may be answered with a determination letter directed solely to the attention of the person in cases in which the Service deems the question not of sufficient importance to the Price Commission, the Internal Revenue Service, or the public in general to warrant the issuance of a ruling.

§ 300.614 Adverse determinations and appeal.

If a person receives an adverse determination letter (as described in paragraph (e) of § 300.613) he may, within 10 days, file a written request for a conference with the district director who issued such adverse determination letter. If the district director fails to reverse his initial determination following such conference, the person affected may, within 10 days after notice of such final determination, file written application for an appeal, together with a brief outlining the basis for such appeal, with the Price Commission. A copy of the application for appeal and the brief shall, at the same time, be directed to the Internal Revenue Service, Attention: Assistant Chief Counsel (Stabilization), Washington, D.C. 20224.

§ 300.615 Failure to obtain relief.

If a person is denied relief by the Price Commission, either because of an adverse determination or because of the Price Commission's refusal to grant an appeal, such person may, within 30 days, file an action for relief in the appropriate U.S. District Court.

§ 300.616 Reports of alleged violations.

Whenever any person has reason to believe that a violation of these regulations has taken place, such person should contact the nearest office of the Internal Revenue Service. Such cooperation on the part of every citizen will insure that the price stabilization program achieves its maximum and intended effect.

§ 300.651 Penalties.

(a) *Illegal practices.* Any person who, by means of inducements, commissions, kickbacks, retroactive increases, transportation arrangements, premiums, discounts, special privileges, tie-in agreements, trade understandings, the falsification of records, the substitution of inferior commodities, the failure to provide the same services and equipment previously sold or leased, or in any other manner seeks to obtain a higher price or rent than is permitted by this part shall be subject to the provisions of paragraphs (b) and (c) of this section.

(b) *Injunctions.* Whenever it appears that any person is engaged, or is about to engage, in any act or practice described in paragraph (a) of this section, the U.S. Government may, in its discretion, bring an action in the proper district court of the United States to enjoin such acts or practices. Upon a proper showing, a permanent or temporary injunction or restraining order may be granted. In addition, upon proper applications, such court may issue mandatory injunctions commanding any person to comply with any provision of this Part 300.

(c) *Fines.* Any person who willfully violates the provisions of this Part 300 shall, upon conviction thereof, be subject to a fine of not more than $5,000 for each violation. See section 204 of title 2 of Public Law 91-379 (84 Stat. 800).

Because the purpose of this Price Commission regulation is to provide immediate guidance as to the price and rent stabilization rules applicable after November 13, 1971, it is hereby found impracticable to issue this Price Commission regulation with notice and public procedure thereon under 5 U.S.C., section 533(b), or subject to the effective date limitation of 5 U.S.C., section 553 (d).

C. JACKSON GRAYSON, Jr.,
Chairman of the Price Commission.

[FR Doc.71-16759 Filed 11-12-71;4:43 pm]

COST OF LIVING COUNCIL

[Order No. 5]

SECRETARY OF THE TREASURY

Delegation of Authority Concerning Implementation of Stabilization of Prices, Rents, Wages, and Salaries

Pursuant to the Economic Stabili- inafter referred to as the Act), and the authority delegated to the Cost of Living Council by Executive Order No. 11627 (hereinafter referred to as the Executive order) it is hereby ordered as follows:

1. There is hereby delegated to the Secretary of the Treasury (hereinafter referred to as the Secretary), subject to the general policy guidance of and coordination with the Cost of Living Council (hereinafter referred to as the Council) and in accordance with the general policy of the Act, authority to interpret, implement, administer, monitor, and enforce the stabilization of prices, rents, wages, and salaries pursuant to the coverage, classifications, and implementation procedures established by the Council. Such functions will include, but not be limited to, the following:

(a) Operation and maintenance of local service and compliance centers established in support of the economic stabilization program in Standard Metropolitan Statistical Areas and such other places as the Secretary may determine;

(b) Dissemination of information and guidance to the public;

(c) Issuance of rulings and the receiving, analyzing, and responding to inquiries relating to the application of regulations and other guidance issued by the Council and the establishment and operation of an appeal procedure;

(d) Receiving, analyzing, investigating, and preparing and forwarding recommendations upon applications for exceptions and exemptions from coverage, classifications, and the implementation procedures to the Council for decision;

(e) Conducting monitoring investigations as to the effectiveness of the stabilization program;

(f) Receiving, investigating, and resolving by obtaining compliance, where possible, complaints received with respect to program violations and recommending enforcement action to the Council, where necessary;

(g) Making factual determinations on behalf of the Council in furtherance of any functions herein delegated; and

(h) Maintaining adequate records and the making of periodic reports to the Council.

2. All executive departments and agencies shall furnish such necessary assistance to the Secretary as may be authorized by law.

3. The Secretary may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. The Director, Office of Emergency Preparedness, shall continue to exercise responsibility and authority under Council Order No. 1 as necessary to complete actions in process and to effectuate an orderly transfer of functions to the Pay Board established by section 7 of the Executive order and the Price Commission established by section 8 of the Executive order.

5. Nothing in this order shall be construed to limit or otherwise supersede the authority heretofore delegated to the Pay Board by Council Order No. 3 or to the Price Commission by Council Order No. 4.

6. This order shall be effective at 12:01 a.m., November 14, 1971.

By direction of the Council.

DONALD RUMSFELD,
Director.

[FR Doc. 71-16760 Filed 11-12-71; 4:43 am]

PRICE COMMISSION

[Order No. 1]

SECRETARY OF THE TREASURY

Delegation of Authority Concerning Implementation of Stabilization of Prices and Rents

Pursuant to Executive Order 11627 and the authority delegated to the Price Commission (hereinafter referred to as the Commission) by Cost of Living Council Order No. 4 (hereinafter referred to as the order), it is hereby ordered as follows:

1. There is hereby delegated to the Secretary of the Treasury (hereinafter referred to as the Secretary), subject to the general policy guidance of and coordination with the Commission and consistent with the general policy of Executive Order 11627 as developed by the Cost of Living Council, authority to interpret, implement, administer, monitor, and enforce the stabilization of prices and rents pursuant to the criteria, standards, and implementation procedures established by the Commission. Such functions will include, but not be limited to, the following:

(a) Operation and maintenance of local service and compliance centers established in support of the economic stabilization program in Standard Metropolitan Statistical Areas and such other places as the Secretary may determine;

(b) Dissemination of information and guidance to the public;

(c) Issuance of rulings and the receiving, analyzing, and responding to inquiries relating to the application of regulations and other guidance issued by the Commission and the establishment and operation of an appeal procedure;

(d) Receiving analyzing, investigating, and preparing and forwarding to the Commission for decision recommendations upon applications for exceptions from the criteria, standards, and the implementation procedures;

(e) Conducting monitoring investigations as to the effectiveness of the stabilization program;

(f) Receiving, investigating, and resolving by obtaining compliance, where possible, complaints received with respect to program violations and recommending enforcement action to the Commission, where necessary;

(g) Making factual determinations on behalf of the Commission or in furtherance of any functions herein delegated; and

(h) Maintaining adequate records and the making of periodic reports to the Commission.

2. All executive departments and agencies shall furnish such necessary assistance to the Secretary as may be authorized by law.

3. The Secretary may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. This order shall be effective at 12:01 a.m., November 14, 1971.

By direction of the Commission.

C. JACKSON GRAYSON, JR.,
Chairman.

[FR Doc.71-16761 Filed 11-12-71;4:43 pm]

PAY BOARD

[Order No. 1]

SECRETARY OF THE TREASURY

Delegation of Authority Concerning Implementation of the Stabilization of Wages and Salaries

Pursuant to Executive Order 11627 and the authority delegated to the Pay Board (hereinafter referred to as the Board) by Cost of Living Council Order No. 3 (hereinafter referred to as the order), it is hereby ordered as follows:

1. There is hereby delegated to the Secretary of the Treasury (hereinafter referred to as the Secretary), subject to the general policy guidance of and coordination with the Board and consistent with the general policy of Executive Order 11627 as developed by the Cost of Living Council, authority to interpret, implement, administer, monitor, and enforce the stabilization of wages and salaries pursuant to the criteria, standards, and implementation procedures established by the Board. Such functions will include, but not be limited to, the following:

(a) Operation and maintenance of local service and compliance centers established in support of the economic stabilization program in Standard Metropolitan Statistical Areas and such other places as the Secretary may determine;

(b) Dissemination of information and guidance to the public;

(c) Issuance of rulings and the receiving, analyzing, and responding to inquiries relating to the application of regulations and other guidance issued by the Board and the establishment and operation of an appeal procedure;

(d) Receiving, analyzing, investigating, and preparing and forwarding to the Board for decision recommendations upon applications for exceptions from the criteria, standards, and the implementation procedures;

(e) Conducting monitoring investigations as to the effectiveness of the stabilization program;

(f) Receiving, investigating, and resolving by obtaining compliance, where possible, complaints received with respect to program violations and recommending enforcement action to the Board, where necessary;

(g) Making factual determinations on behalf of the Board or in furtherance of any functions herein delegated; and

(h) Maintaining adequate records and the making of periodic reports to the Board.

2. All executive departments and agencies shall furnish such necessary assistance to the Secretary as may be authorized by law.

3. The Secretary may redelegate to any agency, instrumentality, or official of the United States any authority under this order, and may, in carrying out the functions delegated by this order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

4. This order shall be effective at 12:01 a.m., November 14, 1971.

By direction of the Board.

GEORGE H. BOLDT,
Chairman of the Pay Board.

[FR Doc.71-16763 Filed 11-12-71;7:18 pm]